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DEPARTMENT OF STATE
Washington, D.C. 20520

June 1, 1973

SECRET



MEMORANDUM FOR MR. HENRY A. KISSINGER
THE WHITE HOUSE

Subject: July-August 1973 Preparatory Meeting For the Law of the Sea Conference

A report prepared by the Interagency Task Force on the Law of the Sea regarding the July 2 to August 24, 1973, Geneva preparatory meeting for the Law of the Sea Conference is attached. The report contains negotiating recommendations as requested in your memorandum of March 16, 1973. The report is being concurrently submitted to the various agencies for comment and clearance. The Department of the Treasury reserves its position on the report pending instructions.

A Task Force report on the March-April 1973 meeting of the U.N. Seabed Committee is also attached.

The report containing recommendations is divided into seven sections, which I have outlined below. In view of earlier submissions on the Law of the Sea, additional background material has only been presented where new issues or additional facts are involved.

Section I. The Context of the Summer Session. This section presents the setting for the July-August Seabed Committee meeting, particularly with regard to the timing of the Conference. The report identifies key issues which need to be resolved in order to achieve a successful overall treaty package. A general grouping of states according to their national interests (coastal, developed maritime, landlocked/shelf-locked, distant water fishing, developing) is outlined. It is suggested that our almost across-the-board interests should help us play a significant role in encouraging the emergence of a package accommodating our basic interests.

Section II. Objectives for the Summer Session. This section recommends four major objectives for the summer session: to begin to construct the outlines of a broad consensus compatible with the full range of basic U.S. interests; to form a broader common front of states with similar interests to demonstrate well in advance the futility of attempting to outvote the U.S., thus leaving adequate time for negotiation; to gain a better understanding of what may be acceptable to other states so that our instructions for the Conference can be formed in a manner that reduces the need for urgent high-level decisions in Washington during the Conference; and to ensure sufficient technical preparations so that the main issues are fairly clearly understood at the Conference and as many important issues as possible are settled in advance. On the straits issue, it is recommended that concentration be placed on the formation of a broad common front of states with similar interests, while continuing our dialogue with straits states and maintaining strong opposition to their innocent passage proposal. As to the question of coastal state resource jurisdiction, it is recommended that the U.S. work with the coastal state majority, in particular in private exploratory discussions with the moderate developing coastal states favoring a 200-mile resource zone on the substance of coastal state jurisdiction and on an overall Law of the Sea package involving the full range of U.S. interests. While maintaining our opposition to exclusive coastal state jurisdiction, we would not in those discussions indicate that we would oppose a 200-mile resource zone if our substantive interests were accommodated. At the same time, we would maintain close contact with the distant water fishing states and the landlocked/shelf-locked states that must eventually be brought along, and would remind the coastal states of that necessity.

Section III. Scientific Research. This section recommends that with respect to protecting our interest in maximum freedom of scientific research our major effort be to avoid a requirement of coastal state consent for research beyond the territorial sea and to demonstrate that developing and coastal state concerns can be accommodated without unnecessary restrictions on access. Scientific research conducted in areas of

coastal state resource jurisdiction would be required to satisfy objective treaty standards. Compulsory dispute settlement procedures would assure the coastal state of compliance with these standards. To meet environmental concerns, the research vessel should meet exclusively international environmental standards, although coastal states could set higher standards for drilling. Low profile efforts would be made to limit the application of scientific research standards only to research concerning or affecting resources.

Section IV. Pollution. This section presents recommendations on vessel source pollution designed to support the U.S. position that vessel source pollution standards should be exclusively international. Measures designed to strengthen IMCO are outlined in order to respond to the need to demonstrate the adequacy of the system for promulgating international standards. To protect against abusive actions and ensure more responsible behavior, all pollution control actions undertaken pursuant to the LOS treaty would be subject to a satisfactory compulsory dispute mechanism to which immediate access can be had. It is suggested that existing rights, including those relating to the right of approach and port and flag state enforcement actions, be spelled out in the treaty. In recognition of the need for effective enforcement and the desire for coastal state pollution controls, a highly circumscribed coastal state enforcement right is recommended. The report recommends three pollution liability objectives, and ideas to achieve them are set out. Military vessels and aircraft would be exempt from the treaty's pollution control provisions.

Section V. Provisional Application of the Treaty. This section presents recommendations on the provisional application of the treaty in the period between signature and its entry into force. The U.S. has already proposed such application for the deep seabeds regime and machinery. Provisional application of other aspects of the treaty, it is believed, would be in the interest of the U.S., provided it were done in a way which encourages prompt ratification of the treaty. Support for provisional application would be indicated in light of its effect on substantive objectives and relevant tactical circumstances.

Section VI. Seabeds Resources: The Intermediate Zone and the Continental Shelf Convention. This section discusses the relationship between our intermediate zone proposal and the exclusive economic zone advocated by certain states, and proposes that the five points in the President's Oceans Policy Statement be made applicable to all seabed resources under coastal state jurisdiction beyond the territorial sea, but with our interim leasing policy continuing to apply only beyond a depth of 200 meters. Flexibility on whether revenue sharing should begin at 200 meters or at 12 miles (coupled with a grandfather clause) is recommended.

Section VII. Compulsory Dispute Settlement. This section recommends that major emphasis be placed on compulsory dispute settlement as a general principle applicable to all disputes arising out of the treaty. Acceptance of the principle of compulsory dispute settlement is regarded as essential to a successful Conference by the U.S. Government Departments and Agencies on the Task Force and affected industries.

Charles N. Brower

Charles N. Brower
Acting Chairman, Interagency
Task Force on the Law of the
Sea

Attachments:

1. Summer Session Recommendations Report
2. Report on March-April 1973 Session

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# REPORT ON THE LAW OF THE SEA AND RECOMMENDATIONS FOR THE JULY/AUGUST 1973 SEABED COMMITTEE MEETING

This memorandum is submitted by the Law of the Sea Task Force in response to Dr. Kissinger's memorandum of March 16, 1973. It presents negotiating positions, strategy, and tactics for use at the meeting of the 91-member UN Seabed Committee in Geneva from July 2 to August 24. As in the past, it is designed to supplement rather than replace existing instructions and the Agencies concerned will submit comments on this report individually. A report on the spring meeting of the Seabed Committee is attached.

## I. The Context of the Summer Session

The eight-week summer session is the last scheduled preparatory meeting of the UN Seabed Committee prior to the Law of the Sea Conference. It will also be the longest ever held.

The Conference is scheduled to begin with a two-week organizational session in New York in late fall. Its substantive session is currently scheduled for eight weeks in April/May 1974 in Santiago, Chile. The relevant General Assembly Resolution provides in the preamble for the possibility of an additional Conference session no later than 1975 if necessary, and expresses the expectation that the Conference will end in 1974 or no later than 1975.

The General Assembly has said it will consider the Law of the Sea item early this fall. The U.S. has stated that at that time it will seek more than eight weeks of work in 1974. If the General Assembly agrees, discussions among delegates indicate that it may provide for lengthening the Conference schedule for 1974 with or without a recess, or it may invite all UN members or Conference participants to a special meeting of the Seabed Committee in early 1974, possibly starting the Santiago Conference session a month or two later. The latter option would in essence be a device to justify providing for additional work in 1974 outside Santiago, since the Seabed Committee traditionally meets in New York or Geneva. It may also be a device to continue work under consensus procedures in the event the draft Conference rules or understandings

 

regarding them do not make adequate provision to protect against premature voting. Conversely, it is possible, but not likely, that the General Assembly would decide to postpone the Conference.

The Seabed Committee is not a model preparatory forum to produce visible evidence of progress. The reasons for this are diverse, and relate to its size, inherent problems with consensus procedures, the only recent abandonment of delaying tactics by most Latin American states, the desire of many delegations to be members of many working groups, reluctance to make concessions too early in the negotiations, and the absence of a clear sense of direction among some delegations, particularly in Africa. Nevertheless, preparations of organized working group texts reflecting alternative solutions on the most technically complex part of the ultimate treaty--the deep seabeds regime--are proceeding moderately well despite the absence of major political compromises, and debate has now clearly focused on concrete problems and proposed solutions in most other areas. By the summer session, most if not all major positions will have been set forth. The OAU heads of state will have determined objectives that many African delegations can be expected to support in the interests of African unity and negotiating strength. More moderate Latin Americans should be consolidating their dominant position in the Latin American group.

More importantly, what has resulted from the Seabed Committee meetings are certain common perceptions among key delegations as to the major areas of agreement and disagreement. It seems reasonably clear that an ultimate overall treaty package would contain a 12-mile territorial sea, broad coastal state control over resources beyond that limit, and an international regime and machinery for deep seabed resources.

The key issues that must be satisfactorily resolved for a successful package are accordingly:

1) Navigation and overflight in international straits and related problems in archipelagos;

2) The nature of the treaty limitations on coastal state jurisdiction over fisheries and mineral resources beyond the territorial sea;

3) Voting procedures in the International Seabed Authority and the nature of the exploitation system for the deep seabeds;

4) Rights and duties regarding the establishment and enforcement of standards to control pollution from ships;

5) Rights and duties regarding the conduct of scientific research in areas where the coastal state manages resources;

6) Dispute settlement procedures to help ensure respect for treaty standards and obligations.

While regional and political alignments play an important role in the formation of positions, direct national interests in the problem have taken on increasing prominence in the formulation of national and group positions. While interests tend to vary and overlap within and among categories, the following distinct categories of states can be discerned:

1) Coastal States. Unless they fall within categories 2 through 5, the major objective of coastal states is maximum jurisdiction off their coast. This is particularly true regarding resources jurisdiction, but also includes at least some desire to control research and pollution from ships. While some realize that their interests would be served by freedom of navigation and overflight beyond a narrow territorial sea and free transit of straits and almost all are prepared to accept a 12-mile territorial sea, most are essentially silent on the straits issue and at least treat it as a concession to the maritime powers. Well over half the states in the world are primarily, if not exclusively, motivated by these coastal state interests. Of the remaining states, those interests are shared at least to some degree except in the case of landlocked states.

2) Developed Maritime States. The strongest common interests among these states are their interests in a narrow territorial sea, transit of straits, and a carefully controlled deep seabed organization. With

respect to coastal state control over resources, they are divided between categories 1, 3 and 4, although few if any support completely exclusive coastal state jurisdiction. Their influence over the negotiation is based largely on their importance as parties to an ultimate settlement; their voting strength is largely dependent on a tacit alliance with other states who share common interests, nota landlocked and shelf-locked states, as well as some other LDC's.

3) Landlocked and Shelf-locked States. These states have little if anything to gain from broad coastal state jurisdiction, and tend to favor narrow coastal state jurisdiction over resources. Most recognize that a more realistic alternative to narrow limits is a right of participation in benefits from broad areas falling under coastal state jurisdiction, e.g. the U.S. proposal for revenue sharing from the continental margin. In the absence of such a result, many of these states have little if any direct interests in working for a timely and successful conference. While the landlocked states are also pushing for access to the sea, most realize that in the end this will depend on bilateral arrangements no matter what the multilateral treaty says. Since many shelf-locked states border enclosed or semi-enclosed seas, they realize their interests are served by free transit of straits. The group as a whole favors tacit cooperation with developed maritime states--like the U.S.--that have made proposals that accommodate its economic objectives. More than in any other area, except U.S.-Soviet cooperation, it is here that direct interests have cut across traditional political groupings. Thus, while avoiding contact with us, Iraq has given tactical support to the U.S. on straits, and is reported to have told other developing countries that "the Nixon proposal is the only one worthy of a great power." It is anticipated that both East and West Germany, which are shelf-locked, will join the group. If landlocked and shelf-locked states stick together, the group can muster close to a "blocking third" at a Conference. Its unified and highly disciplined approach at the last UN General Assembly resulted in several bitter confrontations and close victories.

4) Distant Water Fishing States. These are states that fish primarily off the coast of other countries. Most, but not all, of these states are developed. They favor narrow or very limited coastal state jurisdiction

over fisheries (but not necessarily over seabed resources). If--as appears likely--proposals for special fishing rights among states in the same region achieve wide support (this idea is already taking hold in Africa), the number of states favoring narrow or very limited coastal state jurisdiction over fisheries is not very great. However, their collective influence and the importance of their participation in an ultimate settlement is widely, if reluctantly, accepted. Additionally, since the group includes the USSR, Japan and the UK, their LOS posture exerts some influence on our own position due to our unique relationship with them.

5) Straits States. These are the states that border major international straits. Their principal position is opposition to free transit and support of innocent passage. Some, like Spain and possibly Egypt, appear to be bargaining for political and economic concessions unrelated to the Law of the Sea. A few, like Greece and Malaysia, seem genuinely (if in our view mistakenly) concerned about the effect of free transit on their security and environmental interests. The number of straits states is small, but they use Arab unity and opposition to the superpowers as major political arguments. Aside from a clear tactical alliance between Spain and Brazil and PRC support, their objective of forming an alliance with developing coastal states generally has had only marginal success.

6) Developing Countries. The strongest link among developing countries generally is their desire for participation in control over activities of potential economic value that are or may be exclusively in the hands of a few industrial states. This translates into demands for a deep seabed machinery with a right to exploit by itself, controls over scientific research, vague but insistent discussion of technology transfer, and indeed is partially the explanation for the insistence of coastal developing countries on broad resource jurisdiction despite the fact that many will depend on foreign technology to enjoy the full benefits of those resources. Attempts by straits states and the PRC to extend this to a confrontation with the strategic interests of the "superpowers" have not met with much success.

A substantial number of important, but less comprehensive, categories and subcategories also exists.

The situation created by these divergent and competing interests is one in which the number of states with sufficient flexibility and technical skill to play

a significant role in forming a consensus or at least broad agreement is necessarily limited. While the United States is primarily a coastal state and a developed maritime state--and thus shares the two dominant interests in the negotiation--it is also in some measure a distant water fishing state, and its proposals have been framed for tactical and general foreign policy reasons to accommodate the interests of landlocked and shelf-locked states and developing countries generally. It is now fairly widely recognized that only with respect to the straits states are we, by virtue of our interests, in a position of complete opposition.

While the latter sections of this paper will deal with important substantive proposals regarding the U.S. position, its major focus is that of analyzing how we can make maximum use of our almost unique position to encourage the emergence of agreement around a package that accommodates all of our basic interests, and prevent the emergence of a package that might accommodate only some of those interests.

## II. Objectives for the Summer Session

Our major objectives for the summer session are:

1) To begin, through private discussions authorized by the head of the delegation, to construct the outlines of a broad consensus compatible with the full range of basic U.S. interests.

2) To form a broader common front of states with similar interests on specific issues in order to demonstrate well in advance the futility of attempting to outvote us on critical issues, thus leaving adequate time for negotiation.

3) To attempt to gain a better understanding of what may be acceptable to other states so that our instructions for the Law of the Sea Conference can be formed in a manner that reduces to the extent possible the need for urgent high-level decisions in Washington during the Conference.

4) To ensure sufficient technical preparations so that the main issues are fairly clearly understood at the Conference and as many important issues as possible are resolved in advance.

These objectives are formulated in the belief that the Seabed Committee will not agree on single texts to be forwarded to the Conference on key issues, but that it can--and should--assure adequate formulation of alternative texts for the political negotiations, formulate agreed texts as feasible on other issues, and--in private--construct as broad a common understanding of the major elements of a treaty settlement as possible. This can, in our view, significantly improve the chances for a successful Conference.

While no authority is sought in this section of the report to alter public positions, exploration discussions necessarily go beyond the scope of stated positions. Accordingly, we believe additional discussion of this approach is warranted.

With respect to straits, we intend to concentrate on the second objective, namely, the formation of a broader common front with states with similar interests. This includes, but is not limited to, our NATO and other military allies, developing countries that share our concerns, as well as the USSR and its allies. We will not oppose straits proposals, such as the USSR proposal, (except for its treatment of the Strait of Tiran), that are different from our own article but not essentially incompatible with our interests. Moreover, we will wish to develop a common understanding of the type of wording--compatible with our straits interests--that can achieve the express support of our allies and other states that basically share our straits interests.

At the same time, straits will of course be prominently included in our efforts with respect to the first objective--the formation of the outline of a broad consensus, except that we do not at this time intend to attempt to include our hard-core straits opponents in our own consensus efforts.

This does not mean we will terminate our dialogue with the straits states, and we will continue our efforts to reduce their opposition and attempt to understand their major problems. However, we will maintain our strong opposition to their innocent passage proposal, and innocent passage as currently defined. In the last analysis, of course, the issue is one of substance and not labels. In this connection, we will continue to attempt to ascertain under what conditions

an exception for straits less than six-miles wide, through which there is currently only a right of innocent passage in our view, would be of maximum advantage in reversing the position of states that border on or are interested in such straits (e.g., Italy, Denmark, Egypt and other Arab States), and would enhance overall U.S. straits objectives.

The problem of attempting to achieve the outline of a consensus on coastal state jurisdiction over resources is essentially one of trying to work with the majority--the coastal states--without losing the relevant and significant minorities--the distant water fishing states and the landlocked/shelf-locked states. It is also one of making maximum bargaining use of the strong political desire of the Latin Americans and important Africans to have express reference to a 200-mile limit in connection with resource jurisdiction, and to ensure that every possible concession to us is made or indicated as part of the process. Because acceptance of the 200-mile figure outside Latin America is increasing despite our position--and because domestic pressures are mounting in that direction in Congress--we believe that further delay in opening a private dialogue with moderate African, Latin American, and other nations around the world, will only weaken the value of this intensely important bargaining tool to us.

Sophisticated coastal states realize that U.S. "concessions" on coastal state resource jurisdiction thus far have been carefully designed to serve U.S. coastal interests. Our fishing industry was considerably happier with our second fisheries article than our more conservative first proposal, in large measure because we expanded coastal state controls over coastal and anadromous species. Our petroleum industry was considerably happier with the more "coastal" interpretation of our seabeds proposal on August 10, 1972, than with our original draft. In practice, both the U.S. resource proposals and the 200-mile economic zone proposals would place most of the oil and fisheries beyond the territorial sea under coastal state jurisdiction. Our resource proposals differ from theirs in two important respects. First, we believe such jurisdiction should be subject to treaty limitation standards and compulsory dispute settlement; with respect to fisheries this includes special treatment for anadromous and highly migratory species. Second, with respect to fisheries, we do not support the use of any fixed boundary for coastal

state control. (We are already authorized to support an alternative 200-mile boundary on the seabeds, but have not done so explicitly.)

The first difference is critical with respect to substantive U.S. interests. If those problems can be overcome, including adequate treatment of tuna and salmon, the second is of marginal importance substantively, but of great tactical importance. In that situation, were there to be a line, we certainly would not wish it to be narrower than 200 miles and, indeed with respect to seabeds and possibly fisheries, have some interest in seeing it extend to an agreed limit embracing the continental margin where the margin is broader than 200 miles.

Accordingly, we intend to focus our private consultations with moderate Africans, Latin Americans and others on the substance of coastal state jurisdiction--special treatment of tuna and salmon, international treaty standards, and compulsory dispute settlement--in an effort to obtain maximum concessions on these points and ascertain the scope of their negotiating room. In addition to coastal resource interests, these "package" discussions will involve the full range of other U.S. interests, including straits, deep seabeds, pollution and scientific research. While maintaining our opposition to exclusive coastal state jurisdiction, we will not in those discussions indicate that we would oppose a 200-mile resource zone if our substantive interests were accommodated. At the same time, we will maintain close contact with the distant water fishing states and the landlocked/shelf-locked states that must eventually be brought along, and will remind the coastal states of that necessity.

The Task Force believes that this recommendation is consistent with the instructions in NSDM 177, which contemplated exploratory discussions based on a combined species/zonal approach. In accordance with those instructions, and consistent with the need to preserve the privacy of these explorations, the industry members of the delegation will be informed of our activities. The general approach has already been raised with the Law of the Sea public Advisory Committee on May 18. This recommendation is also made in the light of the response to NSSM 173 of March 7, 1973 on Latin America, and in our view can lead to a treaty that enjoys wide adherence in the Western

Hemisphere. It must be emphasized that the Task Force strategy is that of isolating extreme Latin Americans, such as Brazil, that support a 200-mile territorial sea. We do not wish to isolate Latin Americans as a whole, in particular because of the potential for dealing frankly with some of them on many sensitive issues.

It is contemplated that private explorations will be made only by or at the express direction of the Chairman of the Delegation in consultation with the senior departmental representatives on the delegation, that no commitments inconsistent with existing instructions will be made, and that the Task Force report after the summer session will include a report on, and evaluation of, these discussions.

III. Scientific Research

We anticipate that the U.S. delegation would, in all likelihood, make a proposal on scientific research, in the form of a statement or draft articles, designed to reflect U.S. interests in maximum freedom of research, and to demonstrate that coastal and developing country concerns can be accommodated without unnecessary restrictions on access. Our major effort will be to avoid a requirement of coastal state consent for research beyond the territorial sea, and in this sense we will attempt to supersede the Continental Shelf Convention, which does require such consent. In its place, we propose to substitute objective standards and compulsory dispute settlement procedures. (Section VI of this paper recommends a general approach regarding the continental margin consistent with this effort). Such a system would reduce many of the problems of a consent requirement, but we will not propose or support a consent requirement, and will explain our difficulties with such a requirement.

We believe there is no realistic alternative to a requirement of coastal state consent for scientific research within the territorial sea, and that we must be careful to avoid making proposals in this regard that could be construed to signal the substance of a fallback position regarding research beyond the territorial sea. However, we believe there may be some merit, and minimized risk, in proposing general language to the effect that coastal states, in the

exercise of their sovereignty, shall facilitate the entry of oceanographic research vessels into their ports and the conduct of scientific research in their territorial sea.

The major problem with research is that coastal states already have with respect to the seabeds, and will acquire with respect to fisheries, very substantial resource jurisdiction beyond the territorial sea. As in the Continental Shelf Convention, there is a tendency to conclude that such jurisdiction must necessarily include a right to control research that might concern the resources or seriously affect the environment, to receive research data, and to prevent foreign companies from gaining a bargaining advantage in their dealings with the coastal state because they better understand the implications of the research. While we believe and will explain that there are important differences between commercial exploration and scientific research that justify treating them differently, we must admit that scientific research can be of value to a resource manager or exploiter, and for this reason propose international standards to assure that coastal state resource interests, as well as other interests, are protected. In this connection we will continue to examine whether treaty language should be proposed drawing a precise distinction between exploration and scientific research.

The U.S. approach will be that scientific research in areas of coastal state resource jurisdiction must satisfy certain treaty standards and that compulsory dispute settlement procedures will be established so that the coastal state can assure compliance with such standards. (We will continue to endeavor to ensure that military research in the marine environment is unhampered.) These standards could include:

1) A notification procedure which includes advance informal notice indicating the general nature and likely time of the research project under consideration; a response from the coastal state by a fixed time regarding arrangements concerning it (e.g., participation); and formal notice, including a description of the proposed research (which may be updated) and flag state certification that the institution is a qualified scientific research institution and will abide by the treaty standards;

2) A right of coastal state participation in the research project;

3) Availability of all data and samples to coastal state authorities and to appropriate international data distribution systems;

4) Open publication of results;

5) Technical assistance in consultation with the coastal state arranged by the flag state or through an international organization in the conduct of scientific research and for interpreting the significance of data and results for the coastal state (NSDM 177 and Articles 5(2) and 40(m) of the U.S. Seabeds Treaty apply);

6) Reasonable regard for other uses of the marine environment;

7) Conformity with international environmental standards and coastal State regulations regarding drilling if more strict.

We would anticipate that any proposal would cover most if not all of the points outlined above. For tactical reasons, the proposal itself might not include a full exposition of some of these points where such action would not adversely affect our credibility. For example, it should be relatively easy to achieve a coastal state right to impose higher standards for drilling; thus we might propose adherence to international standards to protect the environment, and withhold our proposal for higher coastal state drilling standards until other States press further for a coastal state right to fix standards higher than the international standards.

An additional problem relates to coastal states' real and perceived concerns regarding environmental damage from research activities. Insofar as vessel construction and design is concerned, international standards would govern. U.S. proposals for environmental protection from seabeds activities in the continental margin relate only to resource exploration and exploitation, and to deep drilling. With respect to seabed resource activites, the International Authority would fix minimum standards, but the coastal state

could fix higher standards, and would enforce those standards. Deep drilling for purposes other than exploration and exploitatio would require a permit from the International Authority. The U.S. has made no proposals regarding the effect of research on living resources. Some states may fear the effect of the use of sonic or explosive devices on living resources, although their concerns may be more economic than environmental, and more perceived than real.

Canada and others have relied heavily on the need for environmental protection to justify regulation of research. The United States must have a credible solution to these environmental concerns if it is to deal effectively with the general demands for regulation. With respect to drilling, we believe these coastal state concerns can best be accommodated if the coastal state has a right to impose standards higher than those set internationally. Moreover, the U.S. scientific community recognizes the need to conduct research in a manner compatible with sound environmental practices.

The U.S. has repeatedly pointed out that a coastal state right to adopt its own environmental standards for ships off its coast is essentially incompatible with freedom of navigation. A similar, although arguably lesser, incompatibility exists between a coastal state right of environmental regulation over scientific research and free access for research vessels. Our solution for ships is a system of exclusively international standards. We should follow the same approach for scientific research, except with respect to drilling, which is discussed above.

The U.S. seabeds proposal already contemplates that the Seabed Authority will set minimum environmental standards for resource activities on the continental margin, and would issue deep drilling permits for other activities. Accordingly, the approach most consistent with our overall positions thus far would be to provide that the Authority may adopt rules and recommended practices establishing general standards regarding environmental protection in the conduct of scientific research. The U.S. seabeds position requires adequate control over the Council of the Seabeds Authority, which in turn controls the rule-making procedure; thus a control system that satisfies our seabeds interests should ipso facto satisfy our research interests.

The U.S. delegation will not raise the question of military oceanographic research in the course of these proposals, and we do not wish the treaty to deal with the subject. After examination of a variety of options, such as limiting research provisions to research concerning resources, or qualifying provisions on participation or data sharing, we have concluded after consultation with representatives of the scientific community that such proposals are probably impractical and that the risk of arousing developing country suspicions that could prejudice both our military and general scientific research objectives is too great. In this connection, it should be noted that not only will freedom of navigation be preserved in the area, but the treaty also will not affect our inspection and verification rights beyond 12 miles under the Seabeds Arms Control Treaty. The approach outlined here will leave a substantial number of options open regarding unclassified research, and does not affect classified research which is properly regarded as military activity and not scientific research for the purpose of the treaty.

Nonetheless, the U.S. delegation will make low-profile efforts to limit the application of scientific research standards, particularly regarding participation and data, to research concerning or affecting resources, and we will attempt to persuade others to support this view. However, we will not reveal the military motivation for this proposal and, in the event of substantial pressure that threatens our military or general scientific research proposals, we will not press this result. In particular, we will wish to avoid stimulating the conclusion that the connection between research and resources is so close that the former must be closely regulated by the resource manager.

## IV. Pollution

NSDM-62 elaborates the basic U.S. position on pollution from the seabeds. NSDM-177 deals extensively with pollution from vessels. This section deals primarily with the critical vessel pollution problem, except for a few additional issues raised at the end.

Subcommittee III of the Seabed Committee has begun preparation of a set of "umbrella" articles to provide a legal framework for protection of the marine environment and prevention of pollution. The initial draft articles thus far proposed are appended to the report of the March/April meeting and are regarded as generally satisfactory. However, the U.S. must be prepared to deal effectively with issues not decided in NSDM-177 if it is to protect its interests in this aspect of the negotiations; in all likelihood, we should submit a set of draft articles ourselves that demonstrate how environmental and coastal state concerns can be accommodated with avoidance of undue prejudice to navigation rights.

A. U.S. Interests Regarding Vessel Pollution

The U.S. has several interests in this negotiation.

First, we have an interest in protection of the marine environment generally, and of our coasts and offshore areas in particular. Because they have other interests involved and because they would wish to head off extreme results, conservative maritime states may be more forthcoming at the Law of the Sea Conference on adequate environmental controls than they have been in IMCO.

Second, we have an economic as well as environmental interest in assuring the strict application of the highest possible standards in the oceans, so as to narrow the gap between high U.S. standards and lesser standards of other countries, and in any event reduce competitive economic restraints on environmental protection. Given the attitudes of other countries, including developing countries, our experience indicates that it is unlikely that international standards would exceed those considered economically-reasonable by the U.S.

Third, we have both security and economic interests in preventing the use of environmental arguments or jurisdiction as basis for unreasonable interference with navigation rights and freedoms. Protection of freedom of navigation beyond a twelve mile territorial sea and free transit of straits are basic objectives of the U.S. in the Law of the Sea Conference. Permitting coastal states, through excessive pollution abatement jurisdiction, to control such important activities as navigation, overflight and other rights to reasonable

uses of the high seas would be inconsistent with those objectives.

Fourth, public and Congressional support during the negotiations, and when a treaty is presented to the Senate, is likely to be significantly affected by our handling of the environmental issue. This will be particularly important in light of our strong position in favor of maximum economic exploitation of ocean resources consistent with sound environmental practices.

Fifth, we have an interest in shaping the negotiation as quickly as possible in directions that accommodate our interests. The idea of a coastal state pollution control zone in which the coastal state has both broad legislative and enforcement jurisdiction is gaining ground (particularly as an element of an exclusive economic zone). It does not adequately accommodate overall U.S. interests. It is inimical to our national security interests, as well as our trade and commercial interests (particularly regarding importation of petroleum) in unimpeded navigation and overflight beyond a twelve-mile territorial sea. However, judging by public reaction to the Canadian claim, it could be sufficiently popular in the U.S. to make it difficult for us to refuse to implement such jurisdiction ourselves if outvoted, or to maintain our opposition to unilateral action in the absence of an adequate alternative system in the treaty.

Sixth, we have an interest in avoiding unnecessary duplication of international functions. A strengthened IMCO is preferable to a new organization. But it must be noted that in the absence of credible U.S. proposals to strengthen IMCO our proposals for exclusively international standards will be viewed as a means of avoiding regulation and we will run a high risk of seeing both a new organization and an undesirable pollution zone established, with both enjoying substantial popularity in the U.S.

B. Tactics

- From a tactical point of view, a set of strong environmental proposals from the U.S., geared to international standards, would expose the weakness of the zonal proposals, tend to attract those legitimately concerned with achieving

adequate environmental control, and at least reduce the intensity of arguments for a coastal state right to fix higher standards. (It appears to be widely accepted that coastal states would have to observe international standards regarding vessels as a minimum.) In addition, we must demonstrate to the developing coastal states that we have responded to their demand for a coastal state right to impose higher standards with tough proposals for establishing and enforcing mandatory international standards, and that they run the risk of trapping themselves into higher standards and a stricter system than they desire for economic reasons if they continue to press us on this issue. In other words, the U.S. should repond to pressure for pollution jurisdiction with pressure for a tougher mandatory international pollution control system.

C. The Source of International Standards

The problem of an adequate system for promulgating international pollution standards goes to the heart of our position that vessel pollution standards should be exclusively international (limited exceptions are discussed later in this paper). To succeed, we must be able to demonstrate that coastal states will not be prejudiced by such a system, and that it can achieve adequate and timely environmental protection. In the absence of such a system, the arguments for a right of coastal states to fix higher standards far out to sea in order to assure self-protection become overwhelming at home and abroad as a matter of politics if not logic.

The Intergovernmental Maritime Consultative Organization (IMCO), the major international institution dealing with vessel source pollution has been criticized on two basic grounds:

1) domination of the organization by the maritime powers; and

2) slowness of response of traditional consultative and treaty negotiation and ratification procedures to technological advances, and to the need to deal effectively with new pollution problems.

With respect to the former, the IMCO committees are run almost entirely by maritime country representatives, although partly because of a lack of expertise and manpower on the part of LDC's, and the formal make-up of the Council is weighted heavily toward maritime interests (6 nations with largest interest in providing shipping services; 6 nations with largest interest in seaborne trade; and 6 nations elected by the Assembly). The U.S. is already supporting rectification of this situation.

With reference to IMCO's response time, the two factors of most importance are that IMCO is only a consultative mechanism and must work through treaty negotiations, and that the existing treaties have cumbersome amendment procedures. In general, we believe the rules and recommended practices procedures of the Chicago (ICAO) Convention of 1944, one of the most widely ratified and successful regulatory treaties in the world, should be used as our model. (It was similarly used in connection with our deep seabed proposals.)

In attacking the first issue of maritime dominance, we could propose changes in the Council structure and on the Committee membership. For example, the 18 seats of the Council could be reallocated with 5 shipping states, 5 interested in trade, and 8 others or additional seats could be added to the present 6 "other". Alternatively a new category of Council members could be created for states with a special interest in protecting their coasts from pollution. On the other hand, it would be preferable to emphasize the regulatory role of a new Marine Environment Protection Committee, which will not have a membership formula, and we are proposing to resolve the problem that way.

We will also propose the establishment by the Marine Environment Protection Committee of regional subcommittees which could provide greater involvement of LDC's and, in particular; coastal states to consider matters of common interest. Such committees could consider regional anti-dumping arrangements, designation of special areas under the proposed 1973 IMCO Pollution Prevention Convention, the establishment of traffic separation schemes, and other matters, and make recommendations on all such matters to the Marine Environment Protection Committee. This proposal

is necessary to deal with various coastal state arguments regarding special regional problems, and could help significantly in attempting to prevent coastal state jurisdiction to fix standards.

With respect to the question of response time and the need to provide IMCO with regulatory authority, we are proposing that, at the October 1973 IMCO Conference, IMCO be given regulatory authority with respect to marine pollution from vessels.

This regulatory authority would be exercised in the same way as the "tacit amendment procedures" that the U.S. is already supporting in the IMCO negotiations. Under these procedures, new standards would be considered by the Marine Environment Protection Committee. When adopted by a two-thirds majority, the standards would be circulated to all contracting states and then considered accepted within a certain time period unless objected to by a designated number or category of states.

While we hope to gain major tactical advantages from these organizational proposals in the Law of the Sea negotiations we believe it would be best if they were first proposed by a high U.S. official concerned with marine pollution at the IMCO Council in June for adoption at the October 1973 IMCO Marine Pollution Conference, and this will be done in a way that is designed to achieve maximum impact on the LOS negotiations. The proposals will be circulated by us at the Seabed Committee in July, and will form the organizational basis from which we will work to achieve agreement on a system of exclusively international standards for vessel pollution at the Law of the Sea Conference. Should IMCO fail to implement these proposals fully before the Law of the Sea Conference, they will be on the record in the Seabed Committee, and we will have preserved our options for dealing with the orgnizational problem at the Conference.

We are also faced with other tactical and coordination problems in connection with the October IMCO Conference on Marine Pollution. Arrangements have been made for close coordination within the U.S. of preparation for both Conferences. With the participation of those agencies

primarily responsible for the IMCO Conference, all members of the Law of the Sea Task Force, we have reached the following conclusions. A successful IMCO Conference that makes major strides in controlling vessel pollution is essential, and we will attempt to persuade LOS as well as IMCO representatives of this. However, we will begin now to try to ensure that important jurisdictional concessions on enforcement or standards need not be made in IMCO but--to the extent we are prepared to make them--should be preserved for the tougher LOS negotiations on this issue. In addition, the major thrust of our proposals to strengthen IMCO should be used as an integral aspect of our negotiating position in the LOS Conference, although we hope the IMCO Conference will implement them in 1973.

D. Standards in the Territorial Sea

Pursuant to existing instructions, the United States tabled a working paper during the March 1973 Seabed Committee meeting arguing for exclusively international standards for vessel polltuion control. The United States will continue to argue for this proposal in the summer session of the Seabed Committee. Of course, the flag state may impose higher standards on its own vessels anywhere in the world. This paper also deals with the application of higher standards in ports. Current U.S. and international law also permits the application of higher coastal state standards in the territorial sea and the 12-mile contiguous zone. We will not propose this result at this time in the Seabed Committee, because it could prejudice our opposition to coastal state standards beyond the territorial sea and in straits used for international navigation, but will be prepared to accept higher coastal state standards in the territorial sea (but not straits) at the appropriate time.

E. Standards in Ports

Under existing international law, a state can unilaterally impose whatever requirements it wishes as preconditions for port entry, including pollution control and safety standards (except, of course, in cases of force majeure or distress where there is a requirement to offer assistance). United States laws provide for the exercise of this right in terms of pollution control (and safety) and we will expand our requirements in the future.

It should also be noted that individual states of the United States may be able to impose unilateral standards on foreign vessels in their ports and territorial sea. The State of Florida recently imposed strict liability for clean-up costs and asserted regulatory authority over all vessels in its waters that are entering or leaving its ports. The statute was recently upheld in the Supreme Court (Askew vs. American Waterways, April 18, 1973). The holding of the case was that there was no conflict here between state and federal law; it did not decide whether a federal law could pre-empt the State's police power in this area. Thus, there remains a remote possibility that state pollution control standards could be constitutional even if a federal statute on the subject were passed; more importantly, there may be significant political opposition to a statute or treaty that seeks to change this rule.

In the Seabed Committee, a major U.S. objective in the negotiations on pollution control has been to prevent adoption of any right of a coastal state to unilaterally impose vessel pollution control standards beyond the territorial sea and in straits. Two major arguments advanced have been the desire for uniformity of standards and the desire to avoid hindrance to navigation. The U.S. made these arguments in its working paper submitted to the Seabed Committee while stressing our desire that the international standards adopted for application beyond the territorial sea be strict and environmentally effective.

While the U.S. objectives of a right for port states to impose higher standards and the avoidance of such a right for coastal states beyond the territorial sea and in straits are consistent and can both be logically supported, it will be necessary to carefully spell out the arguments for each and to distinguish between them. Otherwise U.S. opponents will try to characterize the U.S. positions as inconsistent and argue that we should go one way or the other.

F. Vessels Entitled to Sovereign Immunity

Under existing international law as codified in the High Seas Convention, "warships" and "ships owned or operated by a state and used only on government non-commercial

service" have immunity from the jurisdiction of any state other than the flag state, although such vessels are subject to the provisions of that Convention. Such vessels are also exempted from the provisions of the existing and proposed IMCO pollution control conventions and from the recently-negotia ocean dumping conventions. All of the proposed pollution control articles under consideration in the Seabed Committee exempt military vessels from their provisions.

Warships and state aircraft cannot comply with all likely international pollution standards. Therefore it is essential that we have some form of treaty provisions that exempt them from pollution control provisions of the treaty. Our preferred method of achieving this result would be provisions similar to those used in the Ocean Dumping Convention.

G. Compulsory Dispute Settlement

The United States will propose that all pollution control actions undertaken pursuant to the LOS convention be subject to a compulsory dispute settlement machinery to be established in the convention. This is regarded as an essential protection against abusive actions by port or coastal states and as a means of assuring more responsible behavior with respect to flags of convenience. In this connection, we intend to make clear that U.S. preparedness to consider any enforcement mechanisms at sea entailing possible interference with navigation will be completely dependent on the existence of satisfactory compulsory dispute settlement machinery to which immediate access can be had. In this connection, any of the proposals allowing port or coastal state actions will include a provision requiring liability of the port or coastal state to the flag state for unreasonable actions taken without adequate grounds. Such a provision exists in the High Seas Convention in relation to acts against piracy and in the 1969 Intervention Convention. It would provide an obvious deterrent to abuse or harassment by port or coastal states.

H. Enforcement Against Vessels Other Than Those Entitled to Sovereign Immunity

In view of the very strong U.S. interests in a system of exclusively international standards for vessels, the question of enforcement takes on considerable importance. For there to be an effective system, it must be strictly and comprehensively enforced. Moreover, at this stage of the

negotiations, we cannot credibly disregard all of the coastal state proposals that have been made. Negotiating flexibility is less adverse to U.S. interests on the enforcement question if, as we believe, such flexibility can be used to buttress our position on international standards. Finally, the National Petroleum Council, after careful review of the problem, has issued a public report advocating coastal state pollution enforcement jurisdiction in a zone beyond the territorial sea. While the Council represents the entire U.S. petroleum industry, it does not represent other maritime interests, which have just received the report and not yet clearly reacted to it. For these reasons, certain questions addressed in NSDM-177 will be reviewed in this report, and additional proposals presented. However, this repor is to supplement NSDM-177. Thus, for example, the U.S. will continue in IMCO and the Law of the Sea negotiations to support port state enforcement of international standards against merchant vessels of all flags, wherever the violation may have occurred. Moreover, all of these proposals are presented in the context of U.S. support for satisfactory compulsory dispute settlement procedures and machinery with the power to act quickly.

Many of the members of the Seabed Committee that have addressed the issue have indicated a desire for coastal state pollution controls and it will be necessary to either satisfy that desire directly or convince these countries that the other proposals being put forward will be sufficient protection for them. All of the existing proposals, for example, on an exclusive economic zone or patrimonial sea, include unspecified coastal state rights of pollution control in the zone. This section first deals with general enforcement procedures, irrespective of coastal state rights. The more effective these appear to be, the easier it may be to deal with demands for broader coastal state jurisdiction. The section then contains a recommendation for a coastal state enforcement right of a highly circumscribed character.

In general, U.S. navigation interests will be better protected if acceptable limited coastal state rights are spelled out in the LOS convention than if there is no agreement on coastal state pollution controls; in the latter case, many coastal states would unilaterally claim

pollution control rights, probably very broad ones, in areas beyond the territorial sea. Also, agreement on specifi limited coastal state enforcement would strengthen the general U.S. approach of agreed but limited coastal state rights beyond a 12-mile territorial sea. This may be particularly important now as certain coastal states are making parallel arguments of exclusive coastal state rights in pollution discussions in Subcommittee III and resource discussions in Subcommittee II. From the environmental point of view, the threat of coastal state enforcement action could deter would-be violators and could provide one method for dealing with pollution violations by flag of convenience states (who will hopefully become parties to the LOS Convention because of resource control desires). The provision of efficient, responsive compulsory dispute settlement procedures should greatly lessen any danger of harassment of vessels by a coastal state.

For environmental and economic reasons, the U.S. has an interest in strictest possible enforcement of international anti-pollution standards, and in the protection of navigation from harassment.

Many maritime nations take extremely conservative positions on vessel pollution control standards and enforcement measures. It will be necessary to ensure that U.S. proposals on pollution control do not produce an extreme negative reaction and loss of support for other important U.S. LOS objectives. Consequently, it will be necessary to discuss these issues with others to ensure that they understand the need for proposals on enforcement and other pollution prevention issues both for protection of the environment and to avoid claims of complete and exclusive coastal state controls.

However, it can be argued that enforcement on the open ocean is difficult and expensive due to the sheer size of the areas involved, is ineffective since intentional pollution is often done at night or when no enforcement craft are in sight and is difficult, if not impossible, to detect in bad weather. Dispute settlement procedures may not eliminate the danger of harassment, but such procedures, if reasonably effective, would provide coastal states with a mechanism for ensuring adequate flag state and port state enforcement actions.

It is quite clear that no coastal state enforcement system, even if adopted, would itself be sufficient. Violation could occur even beyond any possible "enforcement zone" or beyond the range of coastal state patrols. Warships and other enforcement vessels already have a right of approach and identification of merchant vessels; as a matter of maritime custom, upon request the merchant vessel also indicates its next port of call. Also, any state has the right to inform another state or international organization of the results of its observations. Finally, a state can refuse entry into its ports for any reason, including a request from another state. Accordingly, the U.S. should propose to institutionalize this system. First, all merchant vessels, upon request, must inform any warship or enforcement vessel or aircraft of their next port of call, and such other information as is required by international pollution standards. Second, any flag or port state receiving notice within a specified time from another state that has observed a possible violation of international standards must undertake an immediate investigation, keep the notifying state informed, and permit participation by the notifying state in the investigation if requested. Any state party may also request the participation of experts designated by IMCO in the investigation, who may file a separate report. A flag state may also designate an observer. Third, if the merchant vessel is bound for a port of the observing state, its warship or enforcement vessel or aircraft may in cases of significant risk immediately notify the vessel that it will be denied port entry unless the vessel submits to on board inspection. A port state may confer similar authority on a warship or enforcement vessel or aircraft of another state if the two so agree. Fourth, a flag state should be obliged to prosecute if an investigation reveals a probable violation by its flag vessel and impose effective sanctions.

Another possibility, which will be studied further before proposed, would be a voluntary system under which tankers and other vessels could carry an IMCO-certified officer on board to assure compliance with environmental standards. A special marker or flag indicating his presence on board might reassure coastal and port states, and deter unreasonable actions on their part. Special locks on valves might have similar utility.

We believe a high degree of caution and circumspection is necessary with respect to coastal state rights beyond the territorial sea. However, it should be noted that a coastal state may already take measures on the high seas to prevent, mitigate or eliminate grave and imminent danger to its coast and related interests after a maritime casualty (the intervention principle). The problem is what can a coastal state do in the absence of a casualty.

Two problems have been highlighted in the debate on coastal state rights. First, it has been argued that a coastal state simply cannot permit dangerous pollution to occur simply because a vessel is beyond 12 miles from its coast in circumstances where flag and port state action is not a solution. This is the underlying logic of the intervention principle. Second, there have been persistent complaints that certain states that supply "flags of convenience" agree to international standards but do not enforce them, and that the coastal state may not be able to rely on adequate port state action either. If these two problems are not addressed constructively, there will continue to be a tendency in the negotiations by other states to emphasize general coastal state powers that are unnecessarily and dangerously broad. In this situation, and particularly in view of our opposition to coastal state standards, it is in the interests of the United States to focus vague demands for pollution jurisdiction on precise enforcement issues [redacted] and to avoid the impression that a system of exclusively international standards leaves the coastal state powerless. Moreover, it is in our interests to encourage reliance on flag states and port states as primary enforcement agents, to ensure that coastal state enforcement is an ancillary procedure, and to bring pressure on "flags of convenience" to comply with international standards.

Accordingly, we believe the United States delegation should propose or support coastal state enforcement powers beyond the territorial sea in the following limited circumstances coupled with liability for abuse of these rights, bonding procedures for vessel release and compulsory settlement of dispute:

- 1) The coastal state may take such reasonable emergency enforcement measures as may be necessary to prevent, mitigate or eliminate imminent danger of major

harmful damage to its coast or related interests from pollution arising from a particular occurence reasonably considered to relate to violation of international standards. Should other delegations raise the question of limits in connection with this point, we will respond that we do not believe discussion of that subject would be productive before substance is decided and we are accordingly not prepared to discuss the question of limits at this time.

2) Coastal states may take specified enforcement measures beyond the territorial sea if the dispute settlement machinery finds that a pattern of unreasonable and persistent failure to enforce internationally agreed standards by a particular flag state has occurred. Such measures shall be specified by the dispute settlement machinery on an interim and emergency basis and shall be limited to those measures essential to bring about adequate flag state enforcement of these standards. The dispute settlement machinery shall rescind the interim order upon a showing by the flag state that it has taken adequate measures.

Canada and others may raise these and other jurisdictional issues at the 1973 IMCO Conference. We do not regard this as desirable from the point of view of the IMCO Conference or the LOS negotiations. We believe these enforcement proposals may be sufficiently attractive to allow us to convince Australia, Canada and others to agree to oppose discussion of jurisdictional issues at IMCO before we make any public statements on enforcement in the Seabed Committee.

I. Intervention by Coastal States

The 1969 Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (not yet in force) provides that a coastal state may take measures on the high seas to prevent, mitigate or eliminate grave and imminent danger to its coast and related interests after a maritime casualty which may reasonably be expected to result in major harmful consequences. The Convention also provides for prior consultation with the flag state if practicable, measures in proportion to the damage threatened and payment of damages by the coastal state if it takes unreasonable measures. U.S. ratification of the Convention is awaiting passage of implementing legislation.

It is felt that the U.S. should continue to push for expansion of the concept and should include such a concept with appropriate safeguards in any set of proposals to be put forward in the Law of the Sea negotiations. Expansion of the Intervention Convention will have some effect in accommodati coastal state desires and inclusion of such an expansion in the Law of the Sea Convention could have the additional advantage of gaining a greater number of adherents to the intervention concept. The U.S. Delegation would make it clear, however, that it favored the continuation of negotiations on expansion of the Intervention Convention in the IMCO forum, with the Law of the Sea forum serving as a fallback if the negotiations in IMCO are not successful, or merely serving to lay out general principles in this regard. For example, a similar principle may be useful, and would be unobjectionable, with respect to the seabeds.

J. Landbased Sources of Pollution

NSDM-177 of July 18, 1972, approved the Law of the Sea Task Force recommendation that the U.S. attempt to avoid negotiation of issues of land-based sources of marine pollution in the Seabed Committee and the Law of the Sea Conference. Although adequate protection of the marine environment clearly necessitates effective action with respect to land-based sources of pollution, it was felt at that time that the law of the sea forum did not provide sufficient time or expertise to adequately consider and negotiate such issues.

We continue to believe that detailed discussion of land-based pollution would be inappropriate and unproductive. However, it became clear during the March meeting that many countries want the Law of the Sea Convention to include a general obligation to protect and preserve the marine environment. The United States shares this objective and has been in the forefront of all international efforts to conclude specific agreements and a general obligation to control marine pollution. Consequently, we should negotiate and accept a general obligation in the Law of the Sea Convention to protect and preserve the marine environment from pollution from all sources, including land-based sources, on the condition that specific undertakings will remain for later negotiation in other forums and that we will continue to avoid specific time-consuming discussions of land-based

pollution in the law of the sea context. Moreover, as a tactical matter, should the coastal developing countries press too hard on the question of pollution from vessels, we could respond with pressure for more definite obligations to negotiate on land-based pollution. It is already clear that this is anathema to the majority of developing countries.

K. State Responsibility and Liability

The United States fully accepts the principle that States have a duty to ensure that any activities, public or private, under their jurisdiction or control do not substantially damage the environment of other States or of areas beyond national jurisdiction. This duty is recognized in Principle 21 of the Stockholm Declaration on the Human Environment, and is reflected in part in the procedures contained in the Federal Water Pollution Control Act for the abatement of pollution endangering the health or welfare of persons in foreign countries. In the LOS forum the U.S. should reaffirm its support of this principle, and should further propose that each State be required to provide adequate recourse to foreign countries or citizens for the abatement of any sources of marine pollution under its jurisdiction, license or control which have a significant adverse effect on their environment or resources. This requirement might be carried out by granting access to domestic courts or administrative bodies for abatement or injunctive remedies.

The question of State liability for activities under its jurisdiction is more complex. While a few international legal precedents suggest that a State may, under some circumstances, be liable for environmental damage caused by continuing private pollution sources under its jurisdiction, the prerequisites and limitations of this liability are very unclear. The best that the participants in the Stockholm Conference could agree upon was a general admonition in Principle 22 that States should "co-operate to develop further the international law regarding liability and compensation ..." for the victims of such pollution damage. While the LOS treaty cannot hope to resolve all of the issues involved in this area, particularly with respect to land-based sources, the United States should use this opportunity to work toward a more effective international system for compensation for all types of pollution from marine sources.

At present, international agreements have been developed with respect to two types of pollutants -- oil and radioactive materials. In the case of persistent oils, the 1969 IMCO Civil Liability Convention imposes unlimited liability on shipowners for oil pollution damage caused in the territory and territorial sea of Party States as a result of their fault or privity, and liability in the absence of fault for up to $144 per vessel ton or $15,120,000 per incident (whichever is lesser). This Convention is supplemented by the 1971 IMCO Compensation Fund Convention, which provides additional compensation for a total of up to $32,400,000 (under both Conventions) for oil pollution damage not recoverable under the Liability Convention. The IMCO Legal Committee is presently studying the expansion of these Conventions to pollutants other than oil.

A number of international agreements have been negotiated to provide compensation for the discharge at sea of radioactive materials. The most notable of these is the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships (not an IMCO product), which imposes liability on the ship's operator regardless of fault for up to roughly $120 million. This liability is guaranteed by the flag state of the nuclear vessel in the event that recovery cannot be obtained from its operator or insurer.

While the United States is not a party to these Conventions, it does support the conclusion of international agreements allocating the burdens of compensation for specific pollutants in a manner which takes into account the economic realities of the particular industry so long as adequate compensation is provided. However, these particular agreements at best cover only part of the possible range of pollutant damage from marine sources, and the United States should attempt in the LOS forum to produce a more comprehensive regime applicable to all merchant ships, commercial seabed installations and other activities at sea which can harm the environment.

The U.S. should have three basic objectives: (1) to assure that there is a source of compensation for all pollution damage; (2) to allocate the burden of compensation in such a way as to maximize incentives for potential polluters to observe safe practices; and (3) to avoid undue

disruption of any existing or planned international arrangements for compensation for damage from particular pollutant sources.

The following are ideas to achieve these objectives which should be explored cautiously and will be studied. First, shipowners and seabed licensees should be required to assume liability for pollution damage resulting from their failure to observe international pollution and navigation standards, backed by appropriate financial insurance or other guarantees. If necessary to achieve agreement, the U.S. could agree to limitations on this liability which do not substantially detract from the observance of international standards, such as a proportionate reduction of liability for the claimant's negligence, acts of third parties and acts of God, or relatively high monetary limitations.

Second, States should adhere to appropriate existing international agreements, or negotiate new ones, providing additional compensation for specific types of pollutants. These agreements might directly impose additional liability on the owner or operator (as the 1969 Civil Liability and 1962 Brussels Conventions do), or create funds from assessments on shippers, shipowners, or receivers (as the 1971 Fund Convention does).

Third, States licensing any vessels, seabed installations or other activities at sea could take appropriate measures through domestic legislation to arrange for the assumption of liability for any damage for which compensation cannot be recovered from either of the above sources. These measures could involve reliance on the private sector to insure or self-insure, Government acceptance of an insurance function with the shipowners or seabed licensees paying premiums, or reliance on funds created from assessments on shipowners or seabed licensees, shippers or receivers of the cargo.

It is clear that such a regime would require detailed rules on liability and procedure which could not possibly be fully negotiated in the LOS treaty. It may, however, be useful to have the basic outlines of this system written into the pollution articles with their implementation to be worked out in such other negotiations as may prove appropriate.

## V. Provisional Application of the Treaty

The United States has proposed provisional application of the deep seabeds regime and machinery to cover the period between treaty signature at the end of the Law of the Sea Conference and entry into force upon deposit of sufficient instruments of ratification. This proposal has been well received at home and abroad, and the UN Seabed Committee approved by consensus a U.S. proposal for a study on precedents for such action. Only China indicated doubts about the proposal, and said it was "not helpful."

In the course of discussion, some foreign representatives have said that in principle this proposal need not be limited to the deep seabeds aspects of the treaty, and should apply to other aspects as well. We believe provisional application of the treaty would be in our interests, but we should be careful to do this in a way that encourages signature and prompt ratification of the treaty. The U.S. coastal fishing industry would favor immediate implementation of increased coastal state fishing rights in the treaty, and other coastal fishing nations would doubtlessly hold the same view. Moreover, provisional application of the treaty system would be preferable to unilateral action by coastal states to resolve their fisheries problems during the period between signature and ratification, as such actions might differ from the treaty provisions and could jeopardize the treaty settlement.

From a legal and technical point of view, provisional application of other aspects of the treaty is likely to be simpler than provisional application of a new deep seabeds regime and machinery. Moreover, since many aspects of the new treaty are likely to be regarded as constituting new norms of international conduct (if not law) by many states, particularly where the result is favorable to their interests, the practical effect of providing for provisional implementation is unlikely to be very different from what would occur in any event in many cases--and could have the salutary effect of reducing misunderstandings and disputes during the period between signature and ratification.

As with our seabeds proposal, our views on provisional application are of course contingent on a timely and successful Conference from our perspective; we will accordingly

wish to approach the question of provisional application in a manner consistent with our interests in promoting signature a prompt ratification of the entire treaty package. Moreover, we will approach the question of broader provisional application in a way that promotes the chances for acceptance of our existi provisional application proposal for the seabeds, and in this connection will have to take into account the sensibilities of distant water fishing states. Thus, while we believe that the United States Delegation should be prepared, where it would be helpful, to propose or support provisional application of other aspects of the Law of the Sea Treaty package as appropriate, we will do so in the light of its effect on our substantive objectives and relevant tactical circumstances.

VI. Seabeds Resources: The Intermediate Zone and the Continental Shelf Convention

NSDM-62 constituted a basic policy decision, reflected in the President's Ocean Policy Statement of May 23, 1970, that United States interests were best served by an extension of coastal state control over resources to a broad area coupled with greater treaty limitations on the exercise of that control than exist in the Convention on the Continental Shelf.

The mechanism chosen was to stop the application of the Continental Shelf Convention at a depth of 200 meters (beyond a 12-mile territorial sea), and to establish a trusteeship or intermediate zone beyond this embracing the remainder of the continental margin. The new treaty limitations would apply only to the intermediate zone.

The President's Statement was deliberately vague regarding the precise balance between coastal and international elements, leaving us room to move either way. For negotiating reasons, we presented a highly internationalized version of the proposal in our draft seabeds treaty. Since then, in accordanc with our instructions, and while insisting upon the "five points" specified in the President's Statement, we have orally indicated receptiveness to a shift in the balance toward fuller coastal state rights. Coastal states, and the U.S. oil industry, have been pleased with these moves. Moreover, we have indicated that we could accept a mileage outer limit for the intermediate zone, if the balance of coasta and international elements is adequate. (We are authorized to specify a figure of 200 miles, but have not yet done so for tactical reasons.)

Recognizing that the primary issue between us and the states supporting an exclusive economic zone or broad application of the Continental Shelf Convention (the result is identical) relates to the "five points", we presented our views on this matter in the following way on August 10, 1972:

"Coastal Resources Generally

"Mr. Chairman, in order to achieve agreement, we are prepared to agree to broad coastal State economic jurisdiction in adjacent waters and seabed areas beyond the territorial sea as part of an overall law of the sea settlement. However, the jurisdiction of the coastal State to manage the resources in these areas must be tempered by international standards which will offer reasonable prospects that the interests of other States and the international community will be protected. It is essential that coastal State jurisdiction over fisheries and over the mineral resources of the continental margins be subject to international standards and compulsory settlement of disputes.

"Seabed Resources -- Coastal Areas

"We can accept virtually complete coastal State resource management jurisdiction over resources in adjacent seabed areas if this jurisdiction is subject to international treaty limitations in five respects:

"1. International treaty standards to prevent unreasonable interference with other uses of the ocean. A settlement based on combining coastal State resource management jurisdictio with protection of non-resource uses can only be effective if the different uses are accommodated. This requires internationally agreed standards pursuant to which the coastal State will ensure, subject to compulsory dispute settlement, that there is no unreasonable interference with navigation, overflight and other uses.

"2. International treaty standards to protect the ocean from pollution. As a coastal State, we do not wish to suffer pollution of the oceans from seabed activities anywhere. We consider it basic that minimum internationally agreed pollution standards apply even to areas in which the coastal State enjoys resource jurisdiction.

"3. International treaty standards to protect the integrity of investment. When a coastal State permits foreign nationals to make investments in areas under its resource management jursidiction, the integrity of such investments should be protected by the treaty. Security of tenure and a stable investment climate should attract foreign investment and technology to areas managed by developing coastal States. Without such protection in the treaty, investment may well go elsewhere.

"4. Sharing of revenues for international community purposes. We continue to believe that the equitable distribution of benefits from the seabeds can best be assured if treaty standards provide for sharing some of the revenues from continental margin minerals with the international community, particularly for the benefit of developing countries. Coastal States in a particular region should not bear the entire burden of assuring equitable treatment for the landlocked and shelf-locked States in that region, nor should they bear the entire burden for States with narrow shelves and little petroleum potential off their coast. The problem is international and the best solution would be international. We repeat this offer as part of an overall settlement despite our conclusion from previous exploitation patterns that a significant portion of the total international revenues will come from the continental margin off the United States in early years. We are concerned about the opposition to this idea implicit in the position of those advocating an exclusive economic zone.

"5. Compulsory settlement of disputes. International standards such as those I described are necessary to protect certain non-coastal and international interests, and thus render agreement possible. Accordingly, effective assurances that the standards will be observed is a key element in achieving agreement. Adequate assurance can only be provided by an impartial procedure for the settlement of disputes. These disputes, in the view of my delegation, must be settled ultimately by the decision of a third party. For us then the principle of compulsory dispute settlement is essential."

It is accordingly clear that the only important difference between an exclusive economic zone (or the continental shelf regime) and our intermediate zone is the application of these five points. This, however, is not clear to other states, particularly those that still see the proposed 200 meter boundary between the continental shelf and the intermediate zone as the "limit of national jurisdicton,"

and who see a depth limit that varies greatly in distance from the coast as highly inequitable. (Indeed, it is likely that if the U.S. wishes to preserve the distinction between the two zones, we would at the least have to accept an alternative mileage limit (e.g., 50 or 100 miles) for the inner zone as well.) Moreover, the U.S. two-zone proposal is in form incompatible with the idea of a single economic zone supported by many coastal states, and the inner zone is incompatible with our own general position on coastal state jurisdiction over living and non-living resources: namely that international treaty standards and compulsory dispute settlement procedures are essential. Accordingly, in substance this change would be more compatible with our fisheries objectives than our current proposal, and the merger of 2 zones of seabed resource jurisdiction into one single zone is unlikely to affect our problems with fisheries zones one way or the other, although we will continue to point out that the differences between seabeds and fisheries problems require different treatments of those problems.

The application of the points in the President's Oceans Policy Statement to a single zone starting at the territorial sea would be highly desirable from the point of view of U.S. environmental, navigation, economic and research interests. From a negotiating point of view, it amounts to telling the proponents of the single 200 mile (or continental margin) zone that we can support their structure for jurisdiction on the seabeds if they support the substantive points in the President's proposal. This approach also gives us the flexibility to eliminate undesirable aspects of the Continental Shelf Convention (e.g., on scientific research), retain the desirable aspects, and use the "new" developing country concept of an economic zone to avoid the direct issues of justifying changes in the Continental Shelf Convention.

Since a large number of countries have already issued exploration and exploitation rights under the continental shelf regime, it should be a relatively simple matter to ensure confirmation of coastal state permits and leases already issued in this area.

Whether we continue a "two-zone" approach or shift to a "one-zone" approach, we probably must for technical reasons present new draft articles on these points this

summer, essentially putting our August 10, 1972, speech into textual form. We believe that, subject to the remarks on revenue sharing, we should have the flexibility to propose either or both approaches in the light of tactical circumstances.

The question of how to handle our revenue sharing proposal under a single-zone approach is a highly delicate one in view of the importance of the landlocked and shelf-locked states, which strongly desire to share in benefits from the continental margin. We believe that any requirement of revenue sharing by coastal states that emerges from the Conference is likely to be quite modest, but we wish the pressure to come from other coastal states to reduce the amount. Accordingly, we have indicated flexibility on the question of amount after our initial substantial proposal, and intend to retain that posture and will not propose a specific formula in any new articles at the summer session.

In this situation, the total revenue sharing obligation is unlikely to be unacceptably large to the U.S. whether it applies from 12-miles or from 200 meters, or from any other line. Moreover, the larger the area to which it applies, the smaller the percentage is likely to be. Thus, we see at least two alternatives in connection with the application of the President's five points. One would be only to apply four of them to the area between 12 miles and 200 meters, with revenue sharing continuing to apply beyond 200 meters. The other would be to apply all five points from 12 miles, but include a grandfather clause excluding all revenues received on areas leased before a fixed date. Again, many coastal states would be expected to support grandfather clauses in this regard. Moreover, should the U.S. leave the fixed date blank for now, it could well stimulate accelerated continental shelf leasing around the world prior to the end of the Conference. We believe it would be best to have the flexibility to take either approach this summer after consultations with the U.K. and other states.

The interim policy portions of the President's May 23, 1970, statement would continue to apply only to the area beyond 200 meters depth. Thus, all leases issued landward of 200 meters before provisional or permanent entry into force of the treaty will not in any way be qualified. However, we consider it to be of critical importance that the United States

continue to indicate its adherence to that policy for areas beyond 200 meters in all relevant documents. The President's Energy Policy message and the Interior Department's notice of tract nominations beyond 200 meters have expressly adhered to that policy. Other states will interpret any deviation from it as a decision by the U.S. that coastal states already have exclusive jurisdiction well beyond 200 meters, and that there is no need to agree to international standards proposed by the U.S. as a quid pro quo. Since leases may be issued beyond 200 meters before the Conference, they should, in view of the President's Ocean Policy Statement and our instructions in NSDM-62, be formulated in coordination with the Law of the Sea Task Force. In the event of disagreement, a supplement to this report would of course be submitted.

## VII. Compulsory Dispute Settlement

Proposals for compulsory dispute settlement has been a basic part of U.S. proposals on fisheries and seabed resources for some time. One of the objectives stated in President Nixon's Ocean Policy Statement of May 23, 1970, is "peaceful and compulsory settlement of disputes." For the seabeds, we have proposed a permanent tribunal. For fisheries we have proposed ad hoc commissions.

The U.S. Government Departments and Agencies on the Law of the Sea Task Force and affected industries regard acceptance of the principle of compulsory dispute settlement as essential to a successful Law of the Sea Conference, as affording vital protection against abuse of coastal state or other authority that will emerge from the Conference, and as a critical device in persuading states to accept a settlement that includes such authority coupled with treaty standards and limitations. Similar considerations apply to the functioning of the deep seabeds organization.

For similar reasons, this report recommends compulsory dispute settlement procedures in connection with scientific research and pollution from vessels.

Secretary Rogers has already stated that:

> This Administration is committed to strengthening the role of international adjudication in the settlement of international disputes. We are taking specific steps to carry out this policy.

# REPORT ON THE MARCH/APRIL, 1973, MEETING OF THE U.N. SEABED COMMITTEE


## Summary

The U.N. Seabed Committee completed its fifth session in preparation for the third U.N. Conference on the Law of the Sea which is scheduled to commence in New York with a two week organizational session during November/December 1973. The substantive phase of the Conference will take place in Santiago, Chile over an eight week period starting in April, 1974. The latest preparatory meeting lasted from March 5 to April 6 and was characterized by a business-like atmosphere and slow but perceptible progress. It now seems clear that the commitment to holding the Conference on schedule is increasing. The preparatory committee is generally moving beyond general debate and procedural wrangling to structured discussion on specific issues in working groups and informal drafting groups. Thus far these groups are preparing for presentation at the Conference draft treaty articles with alternative or bracketed texts where differences exist on the seabed regime and machinery and marine pollution. While the debate and the preparation of articles have served to focus and sharpen positions, the difficult negotiations and accommodations still lie ahead. At this meeting, the United States continued to press for acceptance of the positions it had proposed at previous sessions of the Committee. In support of this objective, the United States delegation made several statements and circulated two working papers. There follows a brief report on the highlights of this session.


## Procedural Developments

An important feature of the March/April meeting was the consensus which emerged on a variety of procedural matters which facilitated the negotiations and opened the way for more intensive work and drafting. Early in the session, the Main Committee agreed on the allocation of subjects and issues contained in the list of subjects and issues adopted last summer. Under this arrangement, Subcommittees I and III will consider items specifically within their mandate and Subcommittee II will discuss all other items on the list except for "peaceful uses" which will be dealt with by the Main Committee.

In the future, the Department of State will examine every treaty we negotiate with a view to accepting, wherever appropriate, the jurisdiction of the International Court of Justice with respect to disputes arising under the treaty. In a treaty in which we or the other government cannot accept the Court's jurisdiction, we will urge the inclusion of other appropriate dispute settlement provisions.

We intend to place major emphasis on compulsory dispute settlement at the summer session as a general principle applicable to all disputes arising under the Law of the Sea Treaty.* We have requested an outside study on procedures for dispute settlement to be ready for our use this summer. Taking into account special problems that may require separate procedures (e.g., fishing disputes, investment disputes between a private party and a state), we may after reviewing the study propose the creation of a Law of the Sea Tribunal, specialized commissions, arbitral panels, or a combination of these. As in our seabeds proposal, there could be provision for referral of questions of international law to the International Court of Justice. We expect to reach decisions on these machinery questions before the delegation leaves for Geneva. In the event of major disagreement, a supplemental report will be submitted.

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* Dispute settlement procedures must respect the sovereign immunity of state aircraft, warships, and other government non-commercial vessels, and accordingly any action involving them can be directed only to the government of the flag state, and not to or against such aircraft and vessels. Moreover, we will leave our options open regarding the application of compulsory dispute settlement in the territorial sea and straits. The approach of accommodating straits state interests by placing certain treaty obligations on the flag state might be considerably more attractive if accompanied by compulsory dispute settlement procedures, but this should be ascertained in the course of our straits discussions. Should it appear that a change of position might enhance overall straits objectives, appropriate new instructions will be requested.

Subcommittee I will prepare draft treaty articles on the international regime and machinery for the seabed; Subcommittee III will deal with preservation of the marine environment and scientific research; and Subcommittee II will be handling issues such as the territorial sea, the contiguous zone, straits used for international navigation, the continental shelf, exclusive economic zone beyond the territorial sea, coastal state preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea, the high seas, the rights of land-locked countries, shelf-locked countries and broad-shelf states, archipelagos and natural and artificial islands.

Two new working groups were established at the March/April session so that there are now four in existence. The first working group had been created in March 1972 to deal with the seabed regime and machinery. Towards the end of last summer's meeting, a second working group was established in Subcommittee III to consider preservation of the marine environment. This session, a third working group of the whole was established in Subcommittee II under the Chairmanship of Ambassador Kedadi of Tunisia to consider the territorial sea, contiguous zone, straits, continental shelf, exclusive economic zone and preferential state rights - not necessarily in that order. The remaining Subcommittee II items on the list of subjects and issues would be dealt with after the working group had completed its discussion on these issues.

While it consumed most of the first three weeks of the session to reach agreement on the formation of a working group in Subcommittee II, the selection of a Chairman, and the basic division of subjects for its consideration, the achievement of this arrangement marked the overcoming of a major psychological obstacle as Subcommittee II had long been the focal point of delaying tactics by those who viewed time as being on their side. The selection of an African Chairman was strongly resisted by the Eastern European block which felt that it should have the Chairmanship. The strength of the group of 77 on procedural issues was once again demonstrated by their ability to secure one of their members to head this important working group. As part of the compromise on this matter, the Eastern European bloc was given a chairmanship of a second working group in Subcommittee III.

On the last day of the March/April meeting, the Chairman of the Seabed Committee, Ambassador Amerasinghe, circulated a paper on the administration and organization of the Conference. He stated that he intended to initiate a series of informal consultations prior to the summer

meeting in order to determine which arrangements would be appropriate, mentioning specifically such questions as Conference officers, a representative of the Secretary General, the decision-making procedures, and voting. On the voting issue he suggested that the Committee articles might be adopted by a simple majority and that at the plenary stage a 2/3 majority might be appropriate.

Territorial Sea and Straits

In August 1972 the Soviet Union circulated a draft article providing for freedom of transit through straits used for international navigation and at this session submitted a draft treaty article providing for a 12-mile territorial sea. In contrast to the US and Soviet position on a special regime for straits used for international navigation, eight States (Spain, Morocco, Philippines, Indonesia, Greece, Cyprus, Yemen and Malaysia) proposed draft articles concerning the territorial sea and straits. These articles do not recognize any special right of transit in straits used for international navigation different from the doctrine of innocent passage in the territorial sea. Moreover, they define the concept of innocent passage in a more restrictive and subjective manner than presently exists under international law. The proposal represented a coalition between hard-line strait states and archipelago states; however the draft was also supported by Peru, Sri Lanka and Cyprus. It was reported that Egypt, while supporting the draft in the Committee, did not consider the draft had gone far enough. The United States expressed deep dissatisfaction with the draft articles and reiterated its strongly held position that US vital interests require agreement on a 12-mile territorial sea coupled with free and unimpeded transit through and over straits used for international navigation. We stressed that the question of straits transit must be considered separately from that of passage generally in the territorial sea. The UK firmly endorsed the US position but reserved comment on the question of strict liability for damage caused by vessels or aircraft in violation of certain IMCO or ICAO standards. The Soviet Union also spoke in support of its straits proposal, which differs from our own in that it would only apply to those straits which connect areas of the high seas, thereby exempting Tiran and a part of Pemba Channel. France and Kuwait also supported free transit although Kuwait made it clear that freedom of transit did not, in its view, include freedom of overflight. Thailand and Zaire indicated that innocent passage would be inadequate for

their individual geographic circumstances while a number of other states, including Madagascar and Tunisia, spoke in favor of the concept of innocent passage. Both Norway and Denmark endorsed the concept of a special regime for straits different from that of passage in the territorial sea.

Four archipelagic states (Philippines, Fiji, Mauritius and Indonesia) introduced a draft paper on archipelagic principles. These principles would give an archipelagic state sovereignty over the waters within the archipelago. The territorial sea would be drawn from the baselines delimiting the enclosed "archipelagic waters." Innocent passage would be permitted in such waters through sealanes designated by the archipelagic state.

The acceptance of a 12-mile territorial sea continued to gather support at this session although many states are tying their agreement on 12 miles to a satisfactory settlement on a broad coastal state economic jurisdiction beyond 12 miles. This broad coastal jurisdiction was often expressed in terms of an economic zone or a patrimonial sea. Interestingly, the clustering of states favoring 12 miles may be having effects on the negotiating positions of states claiming broader territorial sea breadths. Nigeria, for example, stated that although it had a 30-mile territorial sea, it would be willing seriously to consider acceptance of a 12-mile territorial sea if that were embodied in a general convention. Even Peru and Chile spoke favorably of Uruguayan legislation which designates two zones within the "territorial sea". Under the legislation, in the first 12-mile zone, the regime of innocent passage would be applicable. In the second zone of 12 to 200 miles, there would be freedom of navigation and overflight.

In the discussions on the subject of the territorial sea, it emerged that a number of countries were concerned about the jurisdictional issues affecting islands. Turkey and Greece engaged in an extended exchange which related to the troublesome problem of the Greek islands off the Turkish coast. A number of other states such as Italy, Tunisia, Denmark and Venezuela also expressed concern with this problem. Part of the difficulty relates to the question of how much resource jurisdiction these islands should be given in light of the fact that they are often on the continental shelf of another state. States with foreign islands off their coasts may have some interest in narrow territorial sea limits. For example, foreign islands,

which are clearly entitled to a territorial sea under international law, could lead to a disproportionately large loss of territorial sea area which otherwise would go to the coastal State.

Resource Zones and Fisheries

Venezuela, with Mexico and Colombia as co-sponsors, introduced draft treaty articles based on the Santo Domingo Declaration. The articles provide for a 12-mile territorial sea and the equivalent of an exclusive economic zone beyond this territorial sea up to 200-miles. In the patrimonial sea area, there would be freedom of navigation and overflight. In commenting on the articles, Ambassador Castenada of Mexico made a special point of emphasizing that coastal State rights were limited to specific functions in the patrimonial sea. Australia expressed support for a 200-mile fisheries zone, as well as an exclusive economic or patrimonial sea, the breadth of which was undelimited. Ambassador Harry also appeared to endorse the Santo Domingo articles as a basis for discussion. Several delegations noted the similarity between the Santo Domingo articles and the Kenyan draft proposal which provides for an exclusive economic zone.

The United States delegation spoke on several occasions in support of the species approach on fisheries. We also made a detailed statement and circulated a working paper on the special management problems of tuna and anadromous fisheries. The Japanese and Soviets continued strongly to resist zonal approaches on fisheries. The Japanese, in particular, spoke against coastal State management of salmon. The Soviets offered developing countries assistance in improving their fisheries capabilities. Tanzania rejected coastal States preferential rights for coastal stocks as inadequate and endorsed the exclusive economic zone approach. Liberia also spoke in favor of the Kenyan proposal for an exclusive economic zone although the Liberians suggested that there should be international standards for navigation.

Marine Pollution

The working group on marine pollution in Subcommittee III met on fifteen occasions during the March/April session. It began discussion of proposals formally submitted by Australia, Canada, USSR and Malta regarding the preservation of the marine environment and the prevention of marine pollution. These discussions focused on the following

subjects: a general obligation to preserve and protect the marine environment; a general obligation of states to adopt measures to prevent pollution of the marine environment irrespective of the source of pollution; an obligation of states to adopt measures to prevent pollution of the marine environment irrespective of the source of pollution; an obligation of states to prevent damage from marine pollution; a particular obligation of states to adopt specific measures in connection with certain sources of marine pollution and their relation between such measures and generally accepted international standards; and international cooperation and technical assistance. In addition, the working group considered the right of states to exploit their own resources in conformity with the obligation to preserve and protect the marine environment as well as a number of relevant subjects contained in the proposals that were discussed. Much of the substantive work at the March/April session was accomplished in a small, informal working group. This informal working group, in which the United States played an active role, met and consulted twelve times and produced a number of texts based on the draft proposals before the Subcommittee, as well as on the comments of the working group members.

The United States submitted a draft working paper on the need for exclusively international standards for the control of pollution from ships and during the later stages of the March/April session, the working group began a preliminary discussion of these issues. The US position of exclusively international pollution standards for vessels was opposed by the majority of nations in the working group including Canada, Australia, Ghana, Kenya, Malta, Peru, Trinidad and Tobago, India, Egypt, Tanzania, and New Zealand. A number of objections focused on the inability of existing international regulation-making organizations to be responsive to coastal states needs in a timely manner as well as the desires of coastal states to have the right to enforce environmental standards. Our position was supported by the USSR, the UK, Norway, Japan, Greece, Denmark and Liberia.

Scientific Research

The new working group on scientific research which was established at the end of the March/April session, will begin its deliberations in July under the Chairmanship of the Polish representatives. This working group will

also deal with the issue of transfer of technology to developing countries. The United States spoke on the benefits derived from obtaining world-wide geological knowledge obtained from freedom of scientific research in the oceans. The President of the National Academy of Sciences delivered an address on the need to maintain freedom of fundamental oceanographic research. An exhibit of the Deep Sea Drilling Project, sponsored by the National Science Foundation, was displayed in the UN Conference area. In addition, the Woods Hole Oceanographic Institute made a research vessel available for a tour by all Seabed Committee Delegates.

The Soviet Union, with the co-sponsorship of the Ukraine, Poland and Bulgaria, submitted draft treaty articles on marine scientific research. Their fourteen articles reflect a position of maximizing the freedom of scientific investigations in the oceans other than in the territorial sea or on the continental shelf. They provide that scientific research shall not be subjected to unjustified interference, nor shall scientific research itself cause unjustifiable interference with traditional high seas activities. The representative of Malta also introduced draft articles on scientific research which were intended to avoid abuse by either commercial ventures or coastal State controls. The articles go into considerable detail and contemplate a relationship between the international institutions to be established and the conduct of scientific investigations in the oceans.

In other statements, Chile suggested that scientific research needed to be carefully controlled within national jurisdiction and that it also be regulated in the area beyond national jurisdiction. Mexico and Colombia's positions were more moderate on the subject. The UK indicated that it was unnecessary to negotiate on scientific research and that only deep drilling in the seabed presented pollution dangers which needed to be regulated.

Seabeds

The principal US initiative at the March/April meeting was a proposal for the provisional entry into force of the international regime and machinery for deep seabed development. Provisional entry into force under the US proposal would enable our mining companies to begin exploitation of manganese nodules under a provisional

regime that protects their rights after agreement at the Conference was reached but before the Convention received the necessary number of ratifications to enter into force. The United States proposal was well-received. Over 20 delegations spoke to the Proposal and, of these, 17 expressed interest in pursuing the concept. No state was opposed, although the PRC indicated that the approach was "not helpful". As a corollary to its initiative on provisional application, the United States also proposed a study by the Secretary General of past instances where multilateral regimes have entered into force on a provisional basis. This study suggestion was unanimously approved by the Main Committee and will be prepared by the Secretariat for the use of the Seabed Committee at the July/August session.

Negotiations on an international regime for the seabed have progressed further than those on any other subject in the Seabed Committee and this momentum was maintained at the recent session. The working group of Subcommittee I continued to function effectively under the Chairmanship of Christopher Pinto of Sri Lanka. During the fourth week, the second reading of draft treaty articles on seabed regime principles was completed and consideration was shifted to articles on the international machinery for the seabed.

In the working group discussions on the preparation of alternative draft treaty article texts, the Soviet Union, Canada, and Australia indicated that they had "no objection" to giving the Authority the power to exploit the area when the Authority was financially and technology capable of doing so, and, in the Soviet view, as long as the rights of states to exploit the area were protected. From an opposite perspective, Latin American supporters of the Enterprise concept indicated that their position did not contemplate exclusive exploitation by the Authority. Chile and Peru acknowledged that deep seabed mining would not have significant adverse economic effects on developing countries during its early years, although they supported empowering the Authority to control economic implications for developing countries producers as a precautionary measure. These concessions may demonstrate the emergence of a willingness to reach compromises, at least in some areas, in the process of drafting alternative texts. The merging of positions in this matter should substantially reduce the time it will take to make decisions at the Conference.

Efforts in the Subcommittee I working group to produce agreed texts on Article XIV (Due Regard to the Rights, etc. of coastal states) were unsuccessful. The clear implication of the resulting debate was that in

conflicts between coastal States and the international community, coastal States should receive priority. Moreover, developing coastal State dominance was reconfirmed during the debate on Article XIX (Access to and from the Area) in which the landlocked and shelflocked participation was neither effective nor cohesive.

Position of China

The representatives of the People's Republic of China were far more active in this session of the UN Seabeds Committee than previously. The PRC has become increasingly involved since joining the Committee in March, 1972. At this session, they made five major statements on the Law of the Sea which were clearly intended to appeal to the developing countries and to oppose the US and Soviet proposals. They tended to endorse the more extreme positions of the "Third World" and they were one of the few delegations to speak out strongly against the "super-powers", although their attacks were directed principally against the Soviets. They attacked the four Geneva Conventions on the Law of the Sea on the basis that most countries had not participated in their formulation. They asserted that coastal States could unilaterally set their limits for the territorial sea and for economic zones. They maintain that pure science does not exist and that coastal State consent would be mandatory within national jurisdiction. The Chinese charged that the two superpowers wanted narrow limits to dominate the oceans militarily and to plunder the resources of the oceans without regard to the interests of developing coastal States. In spite of the PRC desire to play a leading role in the Law of the Sea deliberations, there was little evidence at this session that they were exerting great influence among the developing countries. The Soviets tended to escalate the political nature of the confrontation by having the head of their Delegation respond to the Chinese attacks. The United States took a low-key approach in responding to the Chinese charges. On the few occasions when we did reply, we stated that we regretted the tone of their remarks which we did not find helpful in advancing the work of the Committee.

Other Developments

The landlocked and shelf-locked block did not appear to be functioning as effectively at the March/April session taking into account their rather remarkable display of cohesiveness and discipline at the last UN General Assembly. However the group did meet regularly and they

did stagger the presentation of statements which promoted the agreed objectives of their group. Some of their difficulties may have resulted from the wide range of issues which must necessarily be covered during Seabed Committee meetings.

The United States continued to work closely on seabed questions with the Group of Five which includes the US, the USSR, Japan, the UK and France. It was agreed that the Group of Five would meet before the summer meeting of the UN Seabed Committee. (These discussions have now been scheduled for the latter part of May and early part of June in London.) The Group of Five will be considering not only seabed matters but also other issues such as a coordinated position on straits, marine pollution, scientific research and tactics at the summer meeting. The Group of Five coordination on contentious issues in the working group in Subcommittee I once again proved very useful. We intend to continue to work more closely with these delegations in the months ahead on certain issues.

Technology transfer continues to be an issue raised by many developing countries in relation to scientific research. As mentioned above, during the concluding days of the March session, a working group on scientific research was established which subsequently had the issue of technology transfer added to its mandate. Although general debate on scientific research in Subcommittee III has concluded, it is anticipated general debate on technology transfer will continue before it is dealt with in the working group.

Congressional Participation

Senators Stevens and Pell and Congressmen Mailliard and Fraser attended portions of the March Seabed Committee meeting. Congressional interest appears to be increasing on the Law of the Sea negotiations. In this regard, the House of Representatives overwhelmingly passed a resolution endorsing the objectives of President Nixon's Oceans Policy Statement of May 23 and commended the work of the US Delegation to the Seabed Committee. A parallel resolution is pending in the Senate.

Treasury Comments

# Next 11 Page(s) In Document Exempt

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Tab D

1. Statements by U.S. Representatives involving economic analysis of law of the sea issues.

Statement by Eliot L. Richardson Before the Committee on Interior and Insular Affairs, U.S. Senate. May 1970. Mr. Richardson explained the basis for the President's May 23, 1970 oceans policy statement.

Statement by Dr. Vincent E. McKelvey Before the Asian-African Legal Consultative Committee, Twelfth Session, Colombo, Ceylon, January 20, 1971. This is an explanation of the resource management system contained in the draft U.S. proposal for the international seabed area.

Statement by Dr. Vincent E. McKelvey, Subcommittee I, U.N. Seabed Committee, March 14, 1972. The statement reports on deep seabed mining operations and the location of manganese nodules.

Statement by John R. Stevenson, Subcommittee I, U.N. Seabed Committee, March 25, 1971. This statement discusses the U.S. draft proposal for the international seabed area.

Statement by Dr. Vincent E. McKelvey, Subcommittee I, U.N. Seabed Committee, March 25, 1971. This is a discussion of the potential mineral production from areas beyond the 200-meter isobath.

Statement by John R. Stevenson, Subcommittee III, U.N. Seabed Committee, March 25, 1971. This statement discusses preservation of the marine environment and oceanographic research.

Statement by Ambassador Donald L. McKernan, Subcommittee II, U.N. Seabed Committee, August 17, 1971. This statement was delivered in conjunction with the distribution of a background paper on the nutritional importance of fish, their behaviorial characteristics and distribution patterns and trends in fish production.

Statement by John R. Stevenson, U.N. Seabed Committee, August 18, 1971. This statement explains the principles behind the U.S. resource and non-resource proposals.

Statement by John R. Stevenson, Subcommittee I, March 6, 1972. This statement discusses the scope and basic provisions of the regime for the deep seabed.

Statement by John R. Stevenson, Subcommittee I, U.N. Seabed Committee, March 21, 1972. This statement concentrates on the status, scope, function and powers of international seabed machinery.

Statement by Ambassador Donald L. McKernan, Subcommittee II, U.N. Seabed Committee, March 29, 1972. This statement focused on the economic interest of coastal States in offshore fisheries.

Statement by Ambassador Christopher H. Phillips, Subcommittee I, U.N. Seabed Committee, July 26, 1972. The statement comments upon the second economic implications study prepared by the U.N. Secretariat.

Statement by John R. Stevenson, Subcommittee III, August 2, 1972. This statement analyzes legal principles dealing with marine pollution.

Statement by Ambassador Donald L. McKernan, Subcommittee II, U.N. Seabed committee, August 4, 1972. This statement accompanied the introduction of the revised U.S. draft fisheries articles.

Statement by John R. Stevenson, U.N. Seabed Committee, August 10, 1972. This statement covered the general policy of the U.S. on ocean resources.

Statement by John R. Stevenson, Subcommittee I, U.N. Seabed Committee, August 14, 1972. This statement reiterated the U.S. opposition to a proposed moratorium on deep seabed exploration and exploitation.

Letter to Senator J. William Fulbright from Charles N. Brower, March 1, 1973. This letter supplemented by an extensive appendix provides Executive Branch views on pending interim mining legislation.

Statement by John Norton Moore, U.N. Seabed Committee, March 19, 1973. This statement proposes consideration of provisional entry into force of the regime and machinery applicable to deep seabed development.

Statement by Ambassador Donald L. McKernan, Subcommittee III, U.N. Seabed Committee, April 2, 1973. This statement accompanied a U.S. working paper on vessel source pollution.

Statement by Howard W. Pollock, Subcommittee II, U.N. Seabed Committee, April 4, 1973. This statement provided a detailed explanation of the U.S. fisheries proposal and accompanied U.S. working paper on anadromous and highly migratory fisheries.

Letter to Congressman Donald M. Fraser from Charles N. Brower, drafted April 11, 1973. This letter supplies data on the value to the U.S. economy of certain interests that might be affected by the law of the sea agreement (fishing industry, oil production, deep seabed manganese nodules, and oil shipments).

2. United Nations Reports Pertaining Economic Issues.

Mineral Resources of the Sea beyond the Continental Shelf, E14449/Add. 1. Prepared by the U.N. Secretary General, 1968.

Report of the Economic and Technical Working Group, Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction, A/7230. 1968.

Study on the Question of Establishing in Due Time Appropriate International Machinery for the Promotion of the Exploration and Exploitation of the Resources of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jursidiction, and the Use of These Resources in the Interests of Mankind, A/7622, 1969. 80 pages.

Economic Considerations Conducive to Promoting the Development of the Resources of the Sea-bed and Ocean Floor Beyond the Limits of National Jurisdiction in the Interests of Mankind, Preliminary Note By the Secretariat, A/AC. 138/6. 1969.

Report of the Economic and Technical Sub-Committee U.N. Seabed Committee, A/7622, 1969.

Study on International Machinery, Report of the Secretary-General, A/AC. 138/23, 1970. This study analyze the various types of international machinery for development of seabed mineral resources. 63 pages.

Possible Methods and Criteria for the Sharing by the International Community of Proceeds and Other Benefits Derived from the Exploitation of the Resources of the Area Beyond National Jurisdiction, Preliminary Note by the Secretariat, A/AC. 138/24. 1970. 6 pages.

Report of Economic and Technical Sub-Committee, U.N. Seabed Committee, A/8021, 1970.

Possible Impact of Sea-Bed Mineral Production in the Area Beyond National Jurisdiction on World Markets, with Special Reference to the Problems of Developing Countries: A Preliminary Assessment, Report prepared by the U.N. Secretary-General, May 28, 1971, A/AC. 138/36. 96 pages.

Additional Notes on the Possible Economic Implications of Mineral Production from the International Sea-Bed Area, Report prepared by the U.N. Secretary-General, May 12, 1972, A/AC. 138/73. 34 pages.

3. Reports Prepared by the National Petroleum Council.

"Petroleum Resources Under the Ocean Floor." Prepared by the National Petroleum Council, 1969. 107 pages.

"Petroleum Resources Under the Ocean Floor - Supplemental Report." Prepared by the National Petroleum Council, March 4, 1971. 63 pages.

Environmental Conservation, the Oil and Gas Industries, Volume Two. February, 1972. Prepared by the National Petroleum Council. This is a comprehensive study of environmental conservation problems as they related to or have an impact on the petroleum industry. 406 pages.

U.S. Energy Outlook, A Report of the National Petroleum Council's Committee on U.S. Energy Outlook, December, 1972. This is a comprehensive study of the Nation's energy outlook. 383 pages.

Law of the Sea, Particular Aspects Affecting the Petroleum Industry, May, 1973. Prepared by the National Petroleum Council. The study considers the question of navigation in coastal waters and international straits and the question of security of investment in overseas and domestic offshore areas. 90 pages.

4. Governmental Studies Relevant to Economic Issues Concerning Law of the Sea

"Study of Outer Continental Shelflands of the United States," Prepared by the Public Land Law Review Commission, Vols I and II. October, 1968. This study is a comprehensive overview of the total system which the Federal Government has adopted with respect to the continental shelf of this country. Approximately 1,500 pages.

Report of the SADOF Working Group on the Limits of National Jurisdiction and the Regime of the Deep Seabed. December 2, 1968. This inter-agency study examined various alternatives for U.S. policy taking into account economic considerations. 91 pages.

Marine Science Affairs, 1967, 1968, 1969, 1970 and 1971. Reports of the President to the Congress on Marine Resources and Engineering Development. These reports include a number of recommendations and analyses of marine science activities of the Federal Government. Approximately 1,000 pages.

World Subsea Mineral Resources. 1969. Dr. Vincent E. McKelvey and Frank H. Wang. This discussion accompanied Miscellaneous Geological Investigations Map 1-632 which displayed the subsea mineral resources around the world.

Science and Environment, Panel Report of the Commission on Marine Science, Engineering and Resources. February 9, 1969. This report makes a comprehensive investigation of the relationship between ocean science and the environment. 344 pages.

Industry and Technology, Panel Report of the Commission on Marine Science, Engineering and Resources, February 9, 1969. This report concentrates on industry and private investment in the ocean. 309 pages.

Marine Resources and Legal-Political Arrangements for their Development. Panel Report of the Commission on Marine Science, Engineering and Resources. February 9, 1969. This report contains extensive information on marine resources and international law and institutions.

Our Nation and the Sea: A Plan for National Action. Prepared by the Commission on Marine Science, Engineering and Resources. 1969. This report contains a number of detailed recommendations on actions the United States should take with regard to the oceans. 305 pages.

"Seabeds Economic Implications Study", prepared by James E. Akins, Department of State with the assistance of the Departments of Interior and Commerce. July 12, 1971. This study was directed primarily at the economic implications of the U.S. draft seabeds proposal. 104 pages.

Final Environmental Statement-Proposed 1973 Outer Continental Shelf East Texas General Oil and Gas Lease Sale. Prepared by Bureau of Land Management, U.S. Department of the Interior. This EIS reviews certain proposed oil and gas leasing on the Outer Continental Shelf of the United States in light of environmental, natural resources, mineral, economic and other factors. Approximately 800 pages.

Final Environmental Impact Statement - Maritime Administration Tanker Construction Program N.T.I.S. Report Number EIS 730725-F. Prepared by the Maritime Administration, Department of Commerce. This EIS reviews the Maritime Administration's Tanker Construction Program in connection with pollution abatement specifications designed to mitigate adverse environmental effects which may flow from the construction and operation of those tankers. Approximately 1,000 pages.

Summary Petroleum and Selected Mineral Statistics for 120 countries, Including Offshore Areas, Geological Survey Professional Paper 817. 1973. Prepared by Geological Survey, U.S. Department of the Interior. The report brings together, in statistical form, available information on world-wide production, reserves, and resources, and certain other data relevant to some of the principal fuels and minerals that either are produced or are likely to be produced from offshore deposits. 149 pages.

Alternative Rules and Provisions Governing Exploration and Exploitation of Seabed Mineral Resources Beyond the Limits of National Jurisdiction. Law of the Sea Task Force Regime Working Group. April 24, 1970. This interagency study concentrated on alternative regimes and rules for seabed mineral development. 84 pages.

Regime for Peaceful Uses Working Paper on International Machinery and Benefits. May 26, 1970. This study was prepared by an interagency working group which analyzed alternative models of international agencies for the seabed and the magnitude and apportionment of benefits which might be anticipated. 60 pages of text and 90 pages of annexed materials.

5. Other Publications Concerning Economic Aspects of the Law of the Sea

Economic Problems and Prospects for exploitation of the resources of the Sea-Bed and its Subsoil, December, 1970. Dr. Francis T. Christy. The study concerns a resource economist's analysis of the seabed and fisheries interests in the Law of the Sea negotiations. 35 pages.

"Ferromanganese Deposits on the Ocean Floor." Edited by Dr. David R. Horn. January 20, 1972. This report contains a comprehensive survey of the location and genesis of manganese modules. 293 pages.

"Fisheries of the United States, 1972", Current Fisheries Statistics No. 6100, U.S. Department of Commerce, March, 1973. This report contains a comprehensive compilation of U.S. and world fishery resources.

"Manganese Nodulesdeposits in the Pacific". Proceedings of Symposium/Workshop sponsored by the University of Hawaii. October 16, 1972. This collection of materials covers distribution of manganese nodules and various aspects of their development such as land based requirements, environmental impacts and industrial evaluations of alternative resource allocation plans. 220 pages.

Who is to Control the Oceans: U.S. Policy and the 1973 Law of the Sea Conference. John R. Stevenson. The International Lawyer, Vol. 6, No. 3, July 1972. This article reviews U.S. law of the sea policy, including the rationale behind our position on economic issues in the oceans.

United States Ocean Mineral Resource Interests and the United Nations Conference on the Law of the Sea. Leigh S. Ratiner and Rebecca L. Wright, The Natural Resources Lawyer, Vol. VI, No. 1, Winter, 1973. The article concentrates on the economic interests of the United States in the context of the law of the sea negotiations. 43 pages.

The Economic and Social Effects of the Fishing Industry - A Comparative Study. 1973. Prepared by the U.N. FAO Department of Fisheries. This Study is based to a large extent on a series of Fishery Country Profiles.

6. National Security Council Memoranda/Decisions

NSC-U/SM 54C, March 12, 1970.

Mr. Richardson included two Memoranda to the President in NSC-U/SM 54C. The first sets out the issues concerning the seabeds and summarized the major proposals. The second contained recommendations by Mr. Richardson outlining common ground between the agencies.

NSDM 62, May 22, 1970.

NSDM 62 established the basic U.S. policy on the Convention on the Continental Shelf and Seabeds.

NSSM 125, June, 1971

NSSM 125 was a comprehensive analysis of the goals and interests of the United States in the Law of the Sea negotiations.

NSDM 122, July 22, 1971.

NSDM 122 represented the President's review of the discussions and options presented in NSSM 125. It provided authority for the U.S. positions at the July/August 1971 U.N. Seabed Committee meeting.

NSDM 122: Implementation of U.S. Oceans Policy and Progress of the Law of the Sea Negotiations, October 14, 1971.

This memorandum was submitted pursuant to NSDM 122 and reported on the measures taken in implementation of NSDM 122 at the July/August 1971 U.N. Seabed Committee session.

Report on Implementation and Proposed Modifications of NSDM 62 and NSDM 122, February 22, 1972

This report proposed certain modifications in the positions set forth in NSDM 62 and NSDM 122 for the purpose of law of the sea preparatory negotiations during the March, 1972 U.N. Seabed Committee meeting.

NSDM 157, March 13, 1972.



NSDM 157 represented the President's approval of the Interagency Task Force's February 22, 1972 report and specifically approved changes in the U.S. position as set forth in NSDMs 62 and 122.

NSDM 157 Report, June 20, 1972.

This memorandum by the Interagency Task Force contained negotiating recommendations as requested in NSDM 157 for the July/August U.N. Seabed Committee Meeting.

NSDM 177, July 18, 1972.

NSDM 177 represented the President's approval of the Interagency Task Forces recommendations of June 20 as the negotiating instruction for the U.S. Delegation to the July/August, 1972 U.N. Seabed Committee meeting.

NSDM 177 Report, September 29, 1972.

This memorandum prepared by the Interagency Task Force in accordance with NSDM 177 contained recommended instructions for the U.S. Delegation to the 27th U.N. General Assembly. A report on the July/August 1972 U.N. Seabed Committee meeting was attached.

NSDM 196, October 31, 1972.

NSDM 196 provided instructions for the U.S. Delegation to the 27th U.N. General Assembly.

Dr. Kissinger's Memorandum of March 16, 1973.

This memorandum endorsed the negotiating plans recommended for the March/April, 1973 U.N. Seabed Committee meeting.

June 1, 1973 Memorandum to Dr. Kissinger, June 1, 1973.

This memorandum contains negotiating recommendations prepared by the Interagency Task Force as requested in Dr. Kissinger's memorandum of March 16, 1973 for the July/August 1973 U.N. Seabed Committee Meeting.

7. Congressional Hearings Related to Economic Aspects of the Law of the Sea

"Foreign Policy Implications of the Energy Crisis", Hearings Before the Subcommittee on Foreign Economic Policy of the House Committee on Foreign Affairs, 92nd Congress, 2d Session (1972).

"Selected Materials on the Outer Continental Shelf" Memorandum by Senator Henry M. Jackson Chairman of the Committee on Interior and Insular Affairs, 91st Congress, 1st Session (1969) 47 pages.

"Outer Continental Shelf" Report by the Special Subcommittee on Outer Continental Shelf To the Committee on Interior and Insular Affairs United States Senate From: Senator Lee Metcalf, 91st Congress, 2nd Session (1970) 222 pages.

"The Law of the Sea Crisis"
A Staff Report on the United Nations Seabed Committee. The Outer Continental Shelf and Marine Mineral Development, Prepared at the Request of Henry M. Jackson, Chairman Committee on Interior and Insular Affairs, 92nd Congress, 1st Session (1972) 327 pages.

"Science, Technology, and American Diplomacy" Exploiting the Resources of the Seabed - Prepared by George A. Doumani (Science Policy Research Division Congressional Research Service, Library of Congress) Prepared for the Subcommittee on National Security Policy and Scientific Developments of the Committee on Foreign Affairs, U.S. House of Representatives, (1971) 152 pages.

"The Law of the Sea Crisis an Intensifying Polarization" A Staff Report on the United Nations Seabed Committee the Outer Continental Shelf and Marine Mineral Development. Prepared at the request of Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs (Part 2) 92nd Congress, 2nd Session (1972) 57 pages.

"Development of Hard Mineral Resources of the Deep Seabed" Hearing before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs, 92nd Congress, 2nd Session on S.2801. A bill to provide the Secretary of the Interior with Authority to promote the conservation and orderly development of the Hard Mineral resources of the Deep Seabed, pending adoption of an international regime therefore. (1972) 77 pages.

"Law of the Sea"
Hearing before the Subcommittee on Oceans and Atmosphereof the Committee on Commerce, United States Senate, 92nd Congress, 2nd Session on the Law of the Sea (1972) 137 pages.

"International Conference on Ocean Pollution" Hearings before the Subcommittee on Ocean and Atmosphere of the Committee on Commerce, 92nd Congress, 2nd Session on International Conference on Ocean Pollution (1972) 126 pages.

"1972 Survey of Environmental Activities of International Organizations" Prepared at the Direction of Honorable Warren G. Magnuson, Chairman for the Use of the Committee on Commerce United States Senate, 92nd Congress, 2nd Session (1972) 187 pages.

Tab E

93D CONGRESS
1ST SESSION

# H. RES. 216

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1973

MR. FRASER (for himself, MR. MAILLIARD, MR. FASCELL, MR. BINGHAM, MR. FINDLEY, MR. ZABLOCKI, MR. SEIBERLING, MR. HAMILTON, MR. BUCHANAN, MR. ROSENTHAL, MR. BROOMFIELD, MR. RUPPE, MR. CONABLE, and MR. MORGAN) submitted the following resolution; which was referred to the Committee on Foreign Affairs

# RESOLUTION

Whereas the oceans cover 70 per centum of the earth's surface, and their proper use and development are essential to the United States and to the other countries of the world; and

Whereas Presidents Nixon and Johnson have recognized the inadequacy of existing ocean law to prevent conflict, and have urged its modernization to assure orderly and peaceful development for the benefit of all mankind; and

Whereas the United States Draft Seabed Treaty of August 1970 offers a practical method of implementing these goals; and

Whereas a Law of the Sea Conference is scheduled to convene in November–December 1973, preceded by two preparatory meetings of the United Nations Seabed Committee; and

Whereas it is in the national interest of the United States that this Conference should speedily reach agreement on a just and effective ocean treaty: Now, therefore, be it

*Resolved*, That the House of Representatives endorses the following objectives, envisioned in the President's ocean policy statement of May 23, 1970, and now being pursued by the United States delegation to the Seabed Committee preparing for the Law of the Sea Conference—

(1) protection of the freedom of the seas, beyond a twelve-mile territorial sea, for navigation, communication, and scientific research, including unimpeded transit through international straits;

(2) recognition of the following international community rights:

(a) protection from ocean pollution,

(b) assurance of the integrity of investments,

(c) substantial sharing of revenues, particularly for economic assistance to developing countries,

(d) compulsory settlement of disputes, and

(e) protection of other reasonable uses of the oceans beyond the territorial sea, including any economic intermediate zone (if agreed upon);

(3) an effective International Seabed Authority to regulate orderly and just development of the mineral

resources of the deep seabed as the common heritage of mankind, protecting the interests both of developing and of developed countries; and

(4) conservation and protection of living resources, with fisheries regulated for maximum sustainable yield, with coastal state management of coastal and anadromous species, and international management of such migratory species as tuna.

SEC. 2. The House of Representatives commends the United States delegation to the Seabed Committee preparing for the Law of the Sea Conference for its excellent work, and encourages the delegation to continue to work diligently for early agreement on an ocean treaty embodying the goals stated in section 1.

Task Force Comment

Approved For Release 2001/08/31 : CIA-RDP80B01495R000800120010-0

DEPARTMENT OF STATE

Washington, D.C. 20520

TO: Deputy Secretary Kenneth Rush, The Chairman of the Undersecretaries Committee

FROM: Charles N. Brower, The Acting Chairman of the Law of the Sea Task Force and Acting Legal Adviser

SUBJECT: Treasury Department Comments of June 15, 1973, Concerning Law of the Sea

I have reviewed the memorandum of June 15, 1973, from the Deputy Secretary of the Treasury on the law of the sea (Tab B) in the light of the Law of the Sea Task Force Report of June 1, 1973 (Tab A), which contains recommended instructions for our delegation to the U.N. Seabed Committee meeting beginning July 2. The Task Force Report received the concurrence of the Secretary of the Interior, the Acting Secretary of Defense (who also forwarded the concurrence for the Joint Chiefs of Staff), the Chairman of the Council on Environmental Quality, the Administrator of the National Oceanic and Atmospheric Administration for the Department of Commerce, as well as the Departments of State and Transportation and the National Science Foundation. Accordingly, Mr. Moore and I have coordinated this memorandum and its attachments with all of those agencies, which have consistently shared the views expressed herein.

## I. Summary and General Considerations

While this memorandum concentrates on the problem requiring most urgent resolution, namely the recommendations on page 6 of the Treasury memorandum, I have attached as Tab C our preliminary responses to some of the specific substantive points which are raised in the body of the Treasury memorandum. Tab D is a table of contents to the supporting economic studies and analyses which have been conducted during the past five years by the Government or outside the Government, to the extent those studies have been used in our policy formulation process.

The President's Oceans Policy Statement of May 1970, the comprehensive report upon which it was based, the many NSSMs, NSDMs, and Presidential as well as other statements which have followed it, elaborate in considerable detail our national objectives in the Law of the Sea Conference, their importance and our methods for achieving them. In essence, the Treasury memorandum questions some of these earlier policy decisions, rather than the recent Task Force Report which concentrates on means to implement them. In

doing so, it does not consider what our real options are either in the negotiations or in the absence of a timely and successful conference. It is my opinion that failure to carry through with our current and recommended positions and strategies from the very start of this summer's session would result in major damage to our oceans interests in the context of the Law of the Sea negotiations as well as other contexts. In view of the consistent repetition of those policies by the President, the Secretary of State, and others, their endorsement this spring by the House of Representatives by an overwhelming vote, and favorable action by the Senate Foreign Relations Committee, it would also have a serious adverse effect on our strong credibility in the Law of the Sea negotiations. Even if the adoption of the Treasury recommendations were the only way to assure timely re-evaluation of specific interests, which is not the case, the price in terms of likely foreign interpretations of our actions taken mere months before the Law of the Sea Conference would be unacceptably high. It would be a costly mistake to send signals either of internal confusion or of a loss of interest in assuring Conference results compatible with our interests.

It is widely accepted that the Law of the Sea Conference can only succeed if there is a comprehensive settlement of all the major issues involved. Our ability to protect any of our interests is, for substantive as well as negotiating reasons, tied to our positions on the whole range of issues. Earlier NSSMs and NSDMs have catalogued and discussed these interests, but it is useful to bear in mind that they include fundamental military security interests affecting our global defense posture; fundamental economic security interests in the movement of energy and other materials and the use of the seas as a direct source of energy, raw materials and food; interests reflected by increasing domestic pressures, which affect our foreign policy, to act unilaterally against Soviet, Japanese, and other fishing vessels off our coast and with respect to the deep seabed, to act against the desires of an overwhelming number of countries in the deep seabeds; avoiding restriction on scientific research in the oceans that provide the basis for our own and other countries' abilities to use the oceans in new and more effective ways; and protection of the oceans from serious degradation in the not-too-distant future as predicted by prominent scientists if seaborne commerce and economic development in other countries as well as the U.S. continue to increase at

projected levels without adequate environmental control. With the rapid development of technology, our stakes in the oceans throughout the world are becoming so high that, in the absence of agreement on an ocean order that accommodates our interests, we may have to choose between abandonment of major interests and diversion of significant military, economic, and political resources to their protection.

The many conclusions which we have reached during our five years of negotiations on this subject have been arrived at after a most thorough analysis of the military and economic security interests of this nation. They have been reviewed and adjusted at least twice a year by the President and senior officials of concerned Departments and agencies. I am satisfied, as are my colleagues who join in this memorandum, that our overall objectives and tactics have been and continue to be in conformity with the best interests of the United States.

Nevertheless, it is always prudent to reassess our objectives on a continuing basis and accordingly, it is my view that Treasury's general recommendation to begin a selective review of the economic policy interests affected by our negotiating position in LOS be accepted, without any alteration in existing instructions or those requested for the July/August meeting before or during that meeting. In accordance with existing instructions from the President on the organization for dealing with Law of the Sea matters, the review suggested by Treasury of the economic implications of LOS positions should be conducted by the Law of the Sea Task Force. It will not be practicable or desirable to conduct such a review in Washington during the summer months when virtually all personnel connected with the Law of the Sea negotiations will be in Geneva. For the purposes of that review, the Task Force should seek the assistance of the White House offices concerned with domestic and international economic policy. A report would be forwarded to you well in advance of the Santiago Conference.

While I support the Treasury recommendation for a selective economic study, I and my colleagues in the other agencies I have referred to believe that Treasury's recommendations, insofar as they would affect our negotiating position at the July/August meeting, should not be adopted. To do so would entail serious risks of degrading the U.S.

bargaining position at the very time the Law of the Sea negotiations are beginning to build the momentum necessary to achieving an overall political settlement of highly contentious issues upon which the success or failure of this Conference will depend.

What Treasury recommends would be seen by other countries as a change in the President's commitment to help establish a new and equitable Law of the Sea that would accommodate the basic interests of all nations. While the President's Oceans Policy was carefully designed to protect fundamental United States interests, it was just as carefully designed to assure that other nations would view it as an attempt to assist the many newly emerged States in the world to achieve greater equality than had been the case in the previous era of colonial domination. Those aspects of the President's Oceans Policy such as revenue sharing and international management of deep seabed resources which have created this emerging developing country view of what they consider to be our enlightened foreign policy have been repeated in each of the President's foreign policy messages including the most recent one which was sent to Congress on May 3 of this year.

Even the Soviet Union and those other developed States which take a more conservative approach toward the law of the sea than we do, understand that our overall approach is designed to further carefully coordinated common navigation interests, and have tried to reinforce our image for this reason. They will not understand apparent U.S. withdrawal from a tacit -- although increasingly explicit -- coordinated negotiating strategy. At best, they will regard this as an unwelcome sign of confusion; at worst they may conclude (despite what we may say) that in fact we are withdrawing support for our joint objectives after years of careful building of a strong working relationship. There is reason to believe that ultimate Soviet attitudes toward the Conference will be strongly influenced by their assessment of U.S. trustworthiness, determination, and skill. We are now the unquestioned leader of the confidential "Group of Five" maritime powers (U.S., U.S.S.R., U.K., France, Japan), and that leadership would also be badly prejudiced by failure to speak frankly, thoroughly, and credibly on the substance of all major issues to that group.

The Treasury recommendations, if adopted, would immediately cause confusion with regard to the United States position in what is widely regarded to be one of the most important and complex multilateral negotiations ever to have been undertaken. It has become apparent that many developing countries, and particularly the key leaders of that group, increasingly look to the leadership and statesmanship of the United States in these negotiations. They believe that only the United States will help to find the kinds of accommodations between themselves and the Eastern and Western European blocs which will produce an equitable treaty. This is probably true. If we now appear to falter in our public negotiating position, the sudden loss of leadership in these negotiations could have devastating effects. We have not in recent years been accorded the respect of world peacemaker in any major multilateral negotiation affecting the fundamental interests of almost every country in the world.

II. Specific Comments on the Treasury Recommendations

I now turn to the five points which Treasury recommends on page 6 of its memorandum.

A. "The primary task of the delegation should be to gain a better understanding of what may be acceptable to other states and to attempt to fathom their position on certain crucial issues."

This has been one of the primary tasks of our Delegation since 1967 when these negotiations began. It is a process which until quite recently has not been very reliable because most countries were stating maximum bargaining positions. The bargaining positions of the majority (coastal developing countries) fall into two categories on the substantive issues raised by Treasury. Some would be regarded as unacceptable or undesirable by all agencies. Others are similar to positions suggested or implied by the Treasury recommendations, but which we have thus far strongly resisted. Put briefly, the majority desires a mostly unrestrained coastal State control as possible far out to sea in order to control the activities of the maritime powers and their nationals. To the extent we might decide at Santiago to eliminate or

weaken the international restraints we hope to place on coastal States, continued pursuit of our current policies will not prejudice our ability to do so, and would in fact enhance the bargaining value of such "concessions". As far as can be determined, only with respect to the deep seabeds is our position closer to that of the developing countries than Treasury might believe desirable. While the deep seabed issue is more fully discussed later in this memorandum, it should be noted that the issue is of considerable ideological importance to developing countries and its resolution is unlikely to affect our energy posture in this century, if ever; U.S. temporizing would have an explosive effect out of all proportion to what we might seek to accomplish, and would undoubtedly invite retaliation on this and other issues.

In this connection, we must bear in mind that States will not, and, as intelligent negotiators, cannot normally indicate final positions on crucial disputed issues until the negotiations approach their conclusion, which at the earliest will be the end of the 1974 Santiago session of the Conference. However, as nations approach the Conference itself, they are stating new positions which are increasingly responsive to the positions of others and increasingly reliable indicators of their true positions. Were we to agree with Treasury's recommendations, we might never know the extent to which coastal developing countries might in fact be prepared to accommodate themselves to objectives our delegation has been instructed to characterize as fundamental for some years. Moreover, in order to achieve a better understanding of the true positions of others, we must do two things. First, we must begin to explore without commitment potential solutions to major problems. Second, we must foster a climate in which less important issues will in fact be resolved through the process of negotiation and accommodation. It is precisely for these reasons and with these objectives in mind that the Law of the Sea Task Force submitted its report to you on June 1, 1973.

If we fail to carry out the actions recommended in that report from the very start of the July/August meeting, it is my opinion that we will probably substantially reduce the chances for successfully achieving our objectives at a Law of the Sea Conference to the great detriment of our economic and military interests in this negotiation.

B. "Although the U.S. delegation may discuss them at a general level, it should refrain from introducing draft articles dealing with the continental margin, revenue sharing, and the functions and powers of the International Seabed Authority. Pending further instructions, the delegation's role in general should be one of collecting information and analyzing the various political blocs developing within the Conference."

The comments in number A above are applicable to the latter sentence. With respect to the specific issues, the following observations apply:

a. Draft articles on continental margin

The United States Delegation introduced a draft treaty on the seabeds on August 3, 1970 in pursuance of NSDM 62. That draft treaty called for the creation of a trusteeship zone over the continental margin in which both coastal states and the international organization to be created would have important roles in connection with resource activity as well as other uses of the area. The President chose from among a variety of options developed in a report presented after several years of exhaustive study and public debate, in which detailed attention was paid both to military and economic security, including in particular the need for secure sources of petroleum. In his covering memorandum recommending the solution ultimately chosen, Under Secretary Richardson explained that it would give us flexibility to emphasize the coastal or international elements as the negotiations progressed while maximizing the potential bargaining advantages to us of any such shift.

Our basic negotiating objective was to achieve certain important restraints on coastal State jurisdiction set forth in the President's Oceans Policy Statement of May 23, 1970. Our more internationalist trusteeship zone treaty proposal was a tactical decision designed to give us negotating flexibility so that after two or three years of negotiation the original President's Oceans Policy would still be viable. Thus, on August 10, 1972, in a speech regarded by many countries as a welcome "concession" by the United States, the head of the U.S. Delegation indicated that the United States could accept virtually complete coastal State resource management jurisdiction in the

continental margin subject to the principles enunciated in the President's Oceans Policy statement. This "concession" was offered only after it had become widely apparent in the negotiations that there was general support for a 12-mile territorial sea with guaranteed freedom of navigation in the area beyond it, and this was clearly understood by others. Unfortunately, however, it seems that the August 10 statement has not yet been clearly understood by all countries as willingness on our part to abandon the original trusteeship zone approach in favor of more expansive coastal State rights subject only to a few limitations. This must be clarified at once in order to avoid backsliding by these countries toward positions in which they would seek to control navigation as well as their economic interests in a broad area adjacent to their territorial seas. Moreover, as the Seabeds Committee is fairly close to precise textual debate and drafting on this issue, we must be able to insure the inclusion of alternative texts reflecting our current public position; our original articles cannot serve this purpose. We cannot slow the preparatory process without sending very damaging signals, nor can we rely on others to protect our position since it in part reflects unique and, in some cases, sensitive interests.

The limitations on coastal State rights we seek that are of direct importance to our military and economic interests are designed to prevent the coastal State from controlling or impeding navigation in areas under its economic jurisdiction, to require the coastal State to assume obligations to respect contracts with foreign investors for the exploration and exploitation of hydrocarbons off its shores, and to ensure that all nations will observe international pollution standards in the exploration and exploitation of seabed resources designed to protect the oceans and our own coasts from safety and pollution practices which may be dangerous. With respect to the last of these, I would note that pollution resulting from oil drilling off a foreign country might not only damage our own environmental interests, but could also result in public reaction adversely affecting our own offshore oil development program. We have already received, for example, indications of Congressional concern with Mexican drilling near the border with Texas. Finally, to assure continuing and effective monitoring and enforcement of these restraints on the coastal State, we proposed compulsory settlement of disputes.

It is now essential to make our position clear by introducing draft articles which will substitute for those

on the trusteeship zone which we have already introduced. These new draft articles can then be evaluated by other delegations as the new United States package with respect to seabed resources. Hence, the objectives which these international restraints on coastal State jurisdiction would serve -- protection of freedom of navigation, protection of U.S. oil investments overseas, and protection of the environment -- would be seriously and unjustifiably jeopardized by our failure to introduce treaty articles this summer.

The President's Oceans Policy Statement, subsequent statements by him and by the Secretary of State in foreign policy reports to Congress, all statements on the continental margin by the heads of our delegation, House Resolution 216 passed on April 2, 1973 (attached at Tab E), and a virtually identical Senate Resolution which was favorably reported on June 25, 1973, by the Senate Foreign Relations Committee, have expressly reaffirmed our willingness to support a system under which all coastal States share some revenues from seabed resource development in continental margin areas under coastal State jurisdiction with the international community, to be used primarily to promote the economic advancement of developing countries. This proposal allowed us to influence the developing countries who regard the existing law of the sea as manifestly unjust to them, and who realize (whether or not they wish to share revenues themselves) that this was an extraordinarily statesmanlike attempt to correct the situation. Even if viewed as an offer of unspecified amounts of money in order to protect our manifold interests in the law of the sea, it is seen in sharp contrast to the positions of those who are offering nothing. It is, in my view, important, if not essential, to maintain that offer -- not necessarily for its own sake but because it keeps us in a favorable posture in the negotiations. Our delegation has used and can use this proposal in numerous ways to further many U.S. objectives related and unrelated to the continental margin, and it is one reason we have been able to build a broad consensus of support at home for all our negotiating objectives, no one of which is popular with all the groups concerned. Similarly, it permits us to head off, but keep alive the threat of, a completely disruptive battle by landlocked and shelf-locked States over limits at least until the negotiations are approaching a satisfactory conclusion.

If revenue sharing from the continental margin is included in a final treaty, it will be a de minimus financial obligation that we (and other coastal States) will have assumed as part of a proposed package settlement that, for our part, protects our vital military and economic security interests for decades to come. While landlocked and shelf-locked countries (who have close to a blocking third) like the proposal, as would be expected, the majority -- the coastal States that are not shelf-locked -- are not at all happy with it. At the very least, it would be foolhardy in this situation to discard a useful proposal in the negotiations that, in the end, the majority may be willing to pay a price of direct or indirect benefit to us for eliminating or reducing to very small proportions. Precise formulae for revenue sharing provisions, if they are to be included in this treaty, will probably not be discussed until much later in the negotiations, but we agree that we should consider the nature and extent of revenue sharing as a matter of priority in the course of the study to be conducted. All that is necessary now is for the United States to keep this vague and undefined offer alive. No detailed negotiation on the issue is likely to occur at the summer session of the Seabed Committee. But, to appear to go back on the commitment through a failure to reaffirm it would strike directly at the President's credibility and stature.

b. The international seabed authority -- its functions and powers.

This will be the principal subject for negotiation in Subcommittee I, commencing its work on July 2. Subcommittee I will devote all of its efforts during the summer to the elaboration of treaty articles on the functions and powers of the authority. The U.S. has been, and indeed must be, an active participant in the process as it has the most immediate interest of all the industrial States in deep seabed mining.

With the exception of the Soviet position on the authority, the U.S. position as reflected in the draft seabeds treaty of August 1970 is the most conservative proposal of the ten which are extant. The U.S. proposal, while elaborate in its detail, gives to the Authority the fewest functions and powers under the tightest system of checks and balances and provides for considerable influence of industrially advanced countries in the critical decision-making apparatus of the Authority. Moreover, as the negotiations progress, it becomes increasingly clear that the international Authority will have few functions

of significance in the areas under coastal State economic jurisdiction. Thus, the powers and functions of the Authority will largely be restricted to the deep seabeds beyond the continental margins. There will accordingly be little if any petroleum in the area it administers. The exception to this situation will be those few aspects covered by the international standards we propose where giving the Authority a few powers in the continental margin will tend to prevent coastal State assumptions of jurisdiction for purposes inimical to our own interests and freedom of navigation.

Were we now to attempt to negotiate treaty articles on the powers and functions of the International Authority more restrictive than those which have already been put forward by our Delegation, the result would seriously damage all of our negotiating objectives, not only those relating to the seabeds. The developing countries realize that the one area in which they can build a new international organization that is more responsive to their needs and interests than other existing international institutions created during the colonial era is in the deep seabeds. Thus, for them to witness the United States backing down from what is already a conservative position, as seen from their perspective, would clearly cause them to toughen their negotiating stance on other issues which the United States regards of greater, if not critical, importance -- such as free transit through and over international straits.

One of our principal strategies in this negotiation has been to break down the tendency of developing countries in the United Nations to behave as a bloc. This has been very difficult to achieve, but most nations are now beginning to negotiate much more on the basis of their own national interests. This development gives us maximum opportunity to succeed in selling our own approach to the Law of the Sea. It would be most unfortunate in these negotiations to provide radical or politically motivated elements in the developing country camp with the ammunition to resolidify bloc thinking. China has been attempting to do this and, fortunately, has not been successful thus far.

C. "The U.S. delegation should not submit draft pollution control articles at this time, but rather should attempt to analyze the various pollution concerns of other nations."

Subcommittee III of the Seabed Committee will commence serious negotiations on pollution articles as soon as the summer session opens on July 2. That Subcommittee has before it several draft treaties on marine pollution. These drafts are harmful to the U.S. interests in the Law of the Sea, particularly freedom of navigation, and the negotiations in that Subcommittee are based largely on them. U.S. negotiators in that Subcommittee can have virtually no effect on the progress of the negotiations unless they are authorized to propose alternatives to the treaty articles under discussion. Failure to do so at this time would result in a cohesive series of treaty articles on the question of marine pollution being sent to the Santiago Conference which would substantially jeopardize military and commercial navigation between 12 and 200 miles from the coast of all nations and which would be completely inconsistant with the decisions in NSDM 177 of July 18, 1972. The positions of other maritime powers are either too inflexible or too ambiguous to have a significant ameliorative affect.

The position expressed by Treasury officials in discussions of the vessel pollution issue, and at least implied in the Treasury memorandum, is substantially the same as that taken by the coastal States. It amounts to support for a coastal State pollution control zone which, in the context of this negotiation, would probably be at least 200 miles wide. This indeed may well be the result unless we make a major effort to resolve it. It is so completely inconsistent with the most fundamental premises upon which we have been negotiating -- freedom of navigation and overflight beyond a 12-mile territorial sea and free transit through and over international straits -- that anything but the most vigorous and carefully constructed U.S. opposition could create irreparable damage to the entire possibility of a treaty we could ratify.

First, the right to establish pollution standards for vessels is in effect a right to control navigation. In the hands of even the least skillful of lawyers, it quickly becomes the functional equivalent of a territorial sea. All a coastal State need do to impede navigation and force ships out, or force other concessions, is establish impractical standards under the guise of pollution prevention. Standards for potential radioactive pollution could cripple our nuclear fleet. Unreasonable standards for potential

oil pollution could cripple tanker traffic. At least half the Mediterranean would be under the "pollution" control of Arab States with a 200-mile zone. Presumably a heavy political or economic price will be expected for looking the other way or permitting alternative solutions, and we will usually be the ones expected to pay. It is argued that at least one of Canada's motives in declaring a pollution control zone in the Arctic was to make a tanker route through the Northwest Passage from Alaska a sufficiently difficult or expensive alternative to a pipeline across Canada. It is argued that she is now using similar techniques to encourage oil refinery construction in Canada rather than Eastport, Maine. A Canadian west coast pollution zone would cover the tanker routes from Alaska to Washington, Oregon, and California.

Tankers from the Persian Gulf to the U.S. and Europe as a matter of practice travel within 200 miles of South Africa. The domestic and international ramifications of South African "pollution" control over our oil supply are enormous. South Africa is now considering unilateral assertion of such control. If coastal State pollution control extended even a little further than 200-miles, the presence of small islands would force those same tankers to travel through pollution control zones of Brazil or several West African States. There are hundreds of other examples. We must oppose this result for the same reason we oppose a broad territorial sea and the "option" to declare a broad territorial sea.

Second, even if we should be willing to rely on the goodwill of coastal States around the world to apply pollution control standards only for the purpose of preventing pollution -- which we clearly should not be -- separate standards would create an enormous economic burden on shipping. Vessel construction standards are a recognized necessity for adequate pollution control but allowing every coastal State to establish such standards would have the same result as allowing every State in the U.S. to establish separate construction standards for a transcontinental railroad. We share Treasury's desire to avoid unnecessary economic burdens on shipping. We believe the only alternative to vigorous U.S. pursuit of current and recommended positions will be pollution zones that create precisely such burdens of potentially monstrous proportions. After years of chaos, the only possible solution would be agreement on uniform international standards -- the position

Treasury now questions. Even Canada -- the originator of the pollution zone concept -- recognizes this and proposes strong international standards as the primary system, with residual rights for a coastal State to act if the international standards are not high enough. She argues that the residual coastal State right is necessary to force the maritime powers to agree to high enough international standards to head off conflicting coastal State standards -- precisely the result Treasury apparently fears most.

Third, no degree of jurisdiction off our own coasts could adequately protect our shores or coastal areas. Pollution in the oceans is widely distributed by winds and currents. In the absence of uniform international standards, inadequate regulation by a developing country neighbor could result in pollution of our coasts; and inadequate controls by developing countries generally could irreversibly damage the oceans' life processes.

Fourth, the U.S. does not have a realistic "option" to apply low standards itself. Domestic environmental concerns have resulted in a situation where MARAD estimates we will be applying among the highest standards in the world to new tankers constructed in the U.S. Federal legislation, and Supreme Court decisions regarding the rights of our States to fix their own higher standards, will result in the application of very high standards to all vessels using our ports. Thus, the issue is not whether we will pay some cost for environmental control, but whether our ships and our trade will be the only ones to bear such costs. To the extent Treasury wishes to control our trade, our proposals for a flag State and port State right to fix higher standards embody such control, and in view of the attitudes of the American people, that is a politically necessary "option" to retain. An option to control shipping off our coast between third States would at most affect the trade of a few neighboring countries that are hardly our major economic competitors, and the most important of which, Canada, is likely to impose at least as high standards as we do anyway.

Fifth, international standards regarding vessel pollution are unlikely to be stricter than those we would impose unilaterally nor will they burden the American consumer (see Tab C, paragraph 4). Our difficulties

have been in getting the shipping States to accept and enforce strict enough standards. Nevertheless, we agree that there must be an adequate balance of interests reflected in the procedures by which international standards are adopted to prevent unreasonable results, and this is in fact the position taken in the Task Force report.

In summary, it is of fundamental importance to our basic military, economic, and environmental security that we negotiate actively and well to defeat unacceptable coastal State discretion regarding pollution controls, and that we do so in a way that does not give the false impression at home or abroad that our opposition to coastal State control is in fact opposition to strong environmental control. To accomplish this we will need to come into Subcommittee III promptly at the beginning of the summer session with proposals for treaty articles which meet the legitimate concerns of coastal States about pollution off their coasts, but which do not permit coastal States to have the power to prescribe standards. This position is not only endorsed by those departments and agencies concerned with maritime transportation but is strongly endorsed by the Council on Environmental Quality, by all of the important public interest and environmental groups which have spoken publicly on the Law of the Sea and by the U.S. petroleum industry. Our precise proposals and positions upon which we seek authorization to table treaty articles were included in the Task Force report and I reaffirm the importance of obtaining authorization to pursue those policies.

D. "During public and private discussions with foreign representatives, and in any working papers, the U.S. delegation may discuss in general terms but should refrain from elaborating upon revenue sharing, the International Authority, and additionally, those Stevenson points relating to unreasonable interference, pollution control, and revenue sharing -- pending subsequent instructions to the delegation."

All of these points have been thoroughly discussed under A and B above.

E. "It is anticipated that further instructions based on the selective review of economic issues raised in this memorandum can be provided to the delegation by mid-to-late July."

I have already explained my views on the necessity for our delegation to pursue existing and proposed instructions vigorously from the start of the July 2 meeting. Most Law of the Sea Task Force reports containing negotiating positions have taken at least one or two months of preparation and study by our most competent personnel, who maintain constant contact with a variety of bureaus in their respective agencies. The last one did, and no suggestion of dissent (normally requiring the preparation of options) was made until the deadline for its submission, and then without explanation. The agencies interested in this subject are sending most of their officials concerned with the Law of the Sea, including senior officials, to Geneva. They recognize, as I do, that the last scheduled preparatory session before the Conference is of critical importance. It would be highly undesirable to recall these people, to attempt to formulate instructions without them, to divert their attention in Geneva from full time pursuit of our objectives, or to leave them in limbo.

In summary, I believe overriding considerations of military and economic security interests, as well as foreign policy interests which go to the very heart of our role in the international community, would be jeopardized if the Treasury Department's recommendations were accepted.

Attachments:

Tab A - LOS Task Force Report, June 1, 1973
Tab B - Department of Treasury Memorandum
Tab C - Preliminary Arguments on Substance
Tab D - Listing of Past Studies
Tab E - H.R. 216

Drafted: L/OA:BHOxman:jv
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STATINTL

[redacted]

Memo

Approved For Release 2001/08/31 : CIA-RDP80B01495R000800120010-0

69-2638/1

SECRET

26 July 1972

1-Chron
1-Project

MEMORANDUM FOR: Director of Central Intelligence

THROUGH : Deputy Director for Intelligence
Director of Basic and Geographic Intelligence

SUBJECT : Agency Activities Related to the Law of the Sea Situation

1. Background to Current Law of the Sea Activities. The law of the sea has become a major area of international confrontation and negotiation. The basic tenet of freedom of the seas that for centuries governed the activities of men and nations has since 1945 been challenged from several directions, and international procedures for adopting new laws to the quickly growing needs of the future are under severe strain. International conferences in 1958 and 1960 which sought to codify the law of the sea did not succeed in fixing the limits of territorial sovereignty nor did they seriously consider the deep seabeds or marine pollution. Consequently, extreme unilateral claims and unrestrained seaward extension of national interests have emerged, stimulated not only by a new nationalism, but also the real or expected capabilities of modern technology. The situation is further complicated by the growing concern over the degradation of the marine environment and the rising expectations of the developing nations who look upon presumed ocean riches as a unique opportunity to challenge the political and economic hegemony of the developed nations.

2. In December 1970 the United Nations decided to convene in 1973 a comprehensive Conference on the Law of the Sea. This decision was the result of three factors. First, the US had been exploring the possibility of a new conference aimed at fixing the breadth of the territorial seas, guaranteeing rights of passage through and over straits, and providing preferential fishing rights on the high seas for coastal states. At the same time the UN Seabeds Committee had been debating a topic of extreme interest to the developing nations -- the possibility

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of a new regime for the seabed, with equitable sharing of the benefits deemed to be the "Common Heritage of Mankind." Finally, the discussions of the oceans had brought the newly independent countries to question the traditional law of the sea, which they feel was developed without their participation and is heavily weighted in favor of the traditional maritime powers. Hence, the Seabeds Committee was expanded to 86 (now 91) nations and assigned the task of preparing for the new Law of the Sea Conference with a mandate to cover all aspects of the subject.

3. Thus far the Seabeds Committee has met in three 5-week sessions (the fourth is currently underway in Geneva) and, at best, their progress in preparation for the Conference has been slow. The biggest obstacle has been getting the nations or groups of nations with strong and divergent views to agree on a list of items that would form a basis for further discussion. Most controversy centers around three basic issues: (a) the right of free transit through or over international straits; (b) the rights of states to the resources that lie off their shores; and (c) the legal regime for controlling marine pollution of the high seas. If the current Seabeds Committee session fails to make substantial progress on these issues the 1973 Conference will very likely be delayed. Most nations, however, fear such delay because unilateral actions and regional arrangements in the interim would be prejudicial to a final agreement. One such action feared by the developing nations is the Metcalf Bill (S-2801 -- in committee in the US Senate) which provides interim legislation authorizing deep sea mining, protection of investment, etc., for US mining interests in the outer continental shelf area. Even if the Seabeds Committee should resolve its immediate problems, the Law of the Sea Conference -- if held -- is still likely to be a long and arduous affair.

4. CIA Involvement. Although the Agency has long had an interest in, and reported on, sea boundaries and the ocean environment, particularly as they relate to military and intelligence operations, and as a potential source of international discord, it was not until the late 1960's that any appreciable attention was focused on the broad and impending law of the sea issues per se. Agency participation in the growing interagency effort, though relatively small, has been concentrated in three general areas: (a) support to the Interagency Law of the Sea Task Force; (b) review and comments at the NSC staff level on several of the oceans policy studies for the White House; and (c) preparation of selected intelligence memoranda and weekly articles on the law of the sea and related topics.

5. Law of the Sea Task Force. CIA was designated an ad hoc member of the Working Group of the Interagency Law of the Sea Task Force in May 1970 and OBGI has furnished a representative since. The Task Force, created by an executive directive in January 1970, is charged with preparing and maintaining a coordinated government position on law of the sea issues and in carrying out bilateral and multilateral negotiations of the approved US positions on those subjects. Chaired by the State Department Legal Adviser, the Task Force's regular membership includes representatives from Defense, Justice, Interior, Commerce, Transportation, the National Security Council, the National Science Foundation, and the Marine Council.

6. An early project in which the Agency participated was the creation of the Law of the Sea Data Bank for use in research support of policy papers and international negotiations. This year selected marine topics from the Data Bank have been incorporated into the NIS Factbook. In direct support of the US negotiators at the meetings of the UN Seabed Committee the Agency (CRS) has prepared [redacted] Recently, OBGI and OCI have provided factual information to special study groups of the Task Force which are preparing reports on the critical straits of the world, and attitudes and positions of the various countries on the important law of the sea issues.

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7. Support to the National Security Council. A major interagency law of the sea effort within the NSC structure occurred last year with the preparation of a monumental study on the US Oceans Policy, which was in response to National Security Study Memorandum 125. Included in the study was a comprehensive treatment of all the important law of the sea policy issues, proposals of ways to achieve overall US objectives, and guidelines for US participation in the UN Seabeds Committee meetings. As a full member of the ad hoc group which prepared the study, CIA participated in the many discussions on the substantive law of the sea issues and submitted several working papers.

8. Evident throughout the sessions was the diversity of ocean policy interests. The Department of Defense, which played a leading role in the sessions, clearly opposes any kind of seaward extension of coastal state authority as a threat to freedom of the seas, to free passage through international straits, and to use of the continental slopes for the installation of monitoring devices. DoD tends to advocate the application of pressure, economic or otherwise, on the troublesome nations in order to gain a

better bargaining position or prevent further erosion of our rights in the event of an unsuccessful Conference. Commerce and Interior, while recognizing DoD concerns, favor broad coastal rights and seek for American industry safeguards in any future seabed activity beyond the area of national jurisdiction (American industry, major parts of Congress and a large section of the bar apparently felt that the initial US seabeds proposal was a "giveaway"). The State Department, intent on preventing international conflicts (some of which are invited by the vaguely worded maritime conventions of the late 1950's) and worried about the difficulty of obtaining bilateral agreements on maritime issues, strongly supported some kind of international regime with regulatory authority. State and CIA area specialists had reservations about using pressure on the Latin American nations claiming 200 mile territorial waters for fear of further hardening their positions in the negotiations. In addition to assessing the reaction of specific foreign countries to new US tactics, CIA also focused on the effect that changing maritime laws will have on military and intelligence activity of both the US and its rivals, and the development of accurate statements of the economic and geographic factors involved.

9. A significant side effect of the Agency's participation in the response to NSSM-125 was the deepening of our knowledge of and an appreciation for the growing international law of the sea problems. During the NSSM exercise, OBGI conducted numerous informal briefings of pertinent Agency components and solicited full coordination and support. Some components knew very little about the law of the sea issues and expressed surprise that the "territorial sea business" covered such a broad and important spectrum of international activity. Others were aware of such topics but had no appreciation as to how the Agency might fit into the picture. Only OCI and OBGI had people who regularly followed the subject. OCI regularly reports on UN law of the sea activity in the CIB and Weekly Summary. OBGI has issued reports on critical law of the sea problems such as the Strait of Malacca, the East China Sea, and the Mediterranean Sea.

10. Intelligence Production. Since last summer the volume of Agency activity has increased. Area desk interest in OCI is evidenced by the timely production of an IM titled Latin America Ocean Nationalism: The 200-Mile Limit, which was commended by Under Secretary of the Navy John Warner (now Secretary of the Navy) during his visit with General Cushman last September. OBGI prepared a CIB item on the Italian-Tunisian seabed controversy and several important graphics for the Law of the Sea Task Force were produced jointly with State/INR.

OBGI currently has a new memorandum on the Strait of Malacca nearing publication. A keen interest is now being shown by OSR and certain elements of DDS&T in the effects that new international accords and seabed commercial ventures might have on specific technical collection operations. Because of a generally heavy inflow of law of the sea information through diplomatic channels, [redacted] 25X1C

25X1C [redacted]

25X1C [redacted] CRS has sharpened its intake and retrieval system on law of the sea topics and on two occasions has provided timely biographic profiles on foreign personalities at the Seabed Committee meetings.

11. On-going negotiations at the UN and the ocean debate underway around the world will have far-reaching economic, strategic and political implications for our country. Policymakers and negotiators therefore will continue to need analyses on a variety of law of the sea and related topics from the various government departments, including the intelligence community. We envision that this effort will require:

a. Appraisals of foreign attitudes and intentions on the law of the sea negotiations.

b. Additional geographic studies on specific problems such as archipelago claims, straits, and the role of small islands in jurisdictional disputes.

c. Assessment of the international situation that would evolve in the event the 1973 Conference fails.

d. Prospects for the discovery and recovery of essential minerals from the oceans with or without international accords. 25X1B

[redacted]

f. Graphic support with maps, charts, and diagrams showing important aspects of the world law of the sea situation.

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CIA Representative on the Interagency
Law of the Sea Task Force

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